Annex to Submission:
Freedom of religion or belief and freedom from violence and discrimination based on sexual orientation and gender identity

HIV Legal Network
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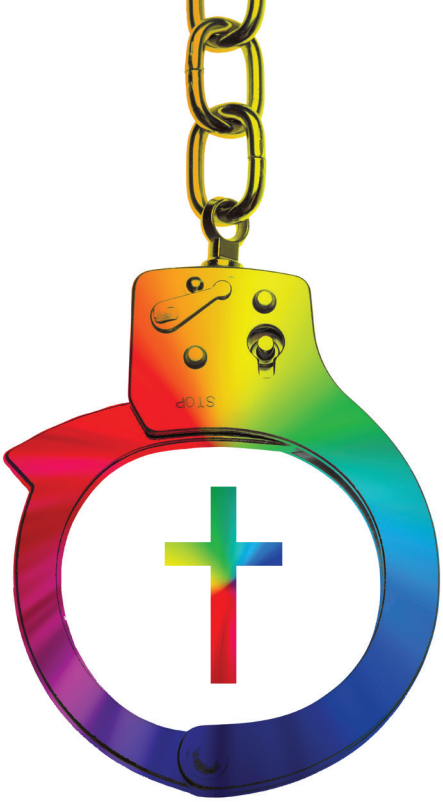

INTIMATE CONVICTION

EXAMINING THE CHURCH AND ANTI-SODOMY LAWS ACROSS THE COMMONWEALTH

CANADIAN HIV/AIDS LEGAL NETWORK

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About the Canadian HIV/AIDS Legal Network

The Canadian HIV/AIDS Legal Network (www.aidslaw.ca) promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization.

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Introduction

In October 2017, the Canadian HIV/AIDS Legal Network and Anglicans for Decriminalization collaborated with local and international partners to host a two-day summit called "Intimate Conviction." This summit was the first-ever discussion of the role (past, present, and future) of the church in the decriminalization of sodomy. It was held because, although there have been rapid advances for LGBT rights in some countries, there are still more than 70 that criminalize private consensual same-sex activity—and more than half of those are in the Commonwealth of Nations and nine in the Caribbean.

The anti-sodomy laws were mostly imposed during the period of British colonial rule and despite decades of independence the statutes have been difficult to dislodge. The British anti-sodomy law reflected Victorian morality, which was based on narrow Church of England (Anglican) theology. While the Church of England played a significant role in decriminalization in the U.K., a similar process has not occurred in the Commonwealth.

During the conference, more than 30 Christian leaders, including many senior clergy and academics, from former British colonies met in Jamaica. The event was organized as a dialogue with presentations on such topics as the distinction between global north and global south churches regarding decriminalization, the role of criminalization on the church's response to HIV, and the impact of criminalization on women, followed by moderated question and answer periods. The sessions were all open to the public and although some local conservative church pastors called for a boycott, there were many significant interventions by Christians opposed to decriminalization. Significant media coverage ensured that the dialogue extended well beyond the conference hall and into the living rooms of ordinary Jamaicans.

This edited volume of some of the conference presentations aims to continue the dialogue with Christians across the Commonwealth on this very sensitive topic. We hope that readers will find inspiration and information here to help continue the fight for decriminalization and equality in all contexts.

In solidarity,

Maurice Tomlinson,
Senior Policy Analyst with the Canadian HIV/AIDS Legal Network

Very Rev. Fr. Sean Major-Campbell

Conference co-hosts

Keynote Address: Examining the Church and Anti-Sodomy Laws across the Commonwealth

Most Rev. Dr. John Holder,
Bishop of Barbados, Archbishop of the West Indies

For better or for worse, human sexuality is a topic that never moves from centre stage in our lives. We may want to ignore its presence, but it is there and envelops our lives in several ways. A good supportive marriage and family life that take us to the very core of the human sexuality issue can create for us positive feelings towards sexuality.

We are confronted by it in a negative way in the practices of prostitution, child sexual abuse, rape, pornography, etc. Traditionally, another expression of sexuality is often cast among the negative ones. This is homosexuality.

Homosexuality is as ancient as it is transnational, transracial, and transcultural. Numerous studies have been done on this expression of human sexuality throughout history. These studies indicate that it was present in ancient Africa, as it was in Europe, Asia, and the Americas. It is in ancient Egypt that scholars have detected what appears to be a same-sex male couple, probably living together living around 2400 BCE.

These were Khnumhotep and Niankhkhnum. They were Ancient Egyptian royal servants. They shared the title of Overseer of the Manicurists in the Palace of King Nyuserre Ini, sixth pharaoh of the Fifth Dynasty, and they were buried together at Saqqara and are listed as "royal confidants" in their joint tomb. (Wikipedia)

The pair is portrayed in a painting in a "nose-kissing position" that has been described as the "most intimate pose in Egyptian art." Despite the evidence of its presence in antiquity, and its prevalence, homosexuality ends up in the negative category of sexual expressions for a number of reasons.

Given the fact that historically procreation has been the primary focus of the sexual act—and is the expression of sexuality that religion links to the divine intention—a sexual practice like homosexuality that biologically precludes procreation hasn't been easily accepted by many people and institutions throughout history.

These acceptance difficulties are manifested not only in religion and in a broad band of social mores, but also in law. Seventy-six countries are known to still have anti-sodomy laws that make homosexual practice a crime punishable by imprisonment.

Ten countries in the Caribbean with varying penalties for homosexual practice are among the 76. These are: Antigua and Barbuda (15 years); Dominica

(25 years); Grenada (10 years); Guyana (20 years to life); Jamaica (10 years); St. Kitts and Nevis (10 years); Saint Lucia (10 years); St. Vincent and the Grenadines (10 years); Trinidad and Tobago (25 years); and Barbados (life).

The titles and wording of the laws make interesting reading. In Jamaica, article 76 of the *Offences against the Person Act,* entitled the "Unnatural Crime," says,

> *Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned & kept to hard labour for a term not exceeding ten years.*

Article 77 states:

> *Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.*

In Trinidad, the *Offences against the Person Act,* article 13(1), reads:

> *A person who commits the offence of buggery is liable on conviction to imprisonment for twenty-five years.*

And article 13(2) defines "buggery" thusly:

> *In this section "buggery" means sexual intercourse per anum by a male person with a male person or by a male.*

Let me read the Barbados law against the background of section 23(1) and (2) of the Constitution of Barbados:

> *23. (1) Subject to the provisions of this section—*
>
> *(a) no law shall make any provision that is discriminatory either of itself or in its effect; and*
>
> *(b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.*
>
> *(2) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not afforded to persons of another such description.*

Note: No mention here of the difference of sexual orientation.

And then there is section 9 of the *Sexual Offences Act 1992*, which reads:

Any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

It has been argued that these laws are based on the 1861 British law. We would, however, be fully aware that England set about in the 1950s to examine criminalization of homosexuality and produced the Wolfenden report. The report recommended that "homosexual behaviour between consenting adults in private should no longer be a criminal offence."

As has been discussed elsewhere, the recommendations in the report eventually led to the *Sexual Offences Act 1967*. This act applied only to England and Wales, but it replaced the previous *Offences Against the Persons Act 1861* and the *1885 Labouchere Amendment*. Under these laws, every homosexual act short of sodomy was illegal.

We may note the typically cautious English approach in the ten-year trek from 1957—the publication of the Wolfenden report—to 1967 and the passage of the *Sexual Offences Act*.

We may well ask why it is then that the ten Caribbean countries, all former colonies of England, have persisted with the law. There can be several answers to this question. I think that one answer must be linked to the religious culture that has dominated this region.

Religion has shaped the lives of the people of this region in many ways. It has legitimized oppressive systems as it has been a source of comfort and hope, which have allowed us to survive these systems and struggle for our liberation.

It has helped us to create some sharp divides between right and wrong as it has also functioned to confuse the same divide. But whatever position is taken, religion brings an abundance of passion to any discussion. No other topic generates this passion as much as human sexuality.

In the discussion of human sexuality in general and sodomy laws—the prohibition against the act of homosexuality—in particular, these many sides of religion surface. In this context, religion often becomes an instrument of division rather than one of healing and enlightenment as it ought to be.

In the discussion in Christianity, there is often a mad rush to the Bible, seeking support for the many varied and conflicting perspectives. In the Caribbean, among a vast majority of our people, whether they attend church or not, the Bible is the yardstick by which all human issues are to be measured, especially moral issues. It is seen as containing solutions to varied human challenges, with sexuality among them.

It seems, therefore, that given the centrality of the Bible in the life of the church and in the life of Caribbean people, and given the fact that I am probably more competent in biblical exegesis than in the interpretation of law, I see my primary task here as one of creating a sensible, functional biblical framework for

a discussion of the sodomy/homosexual issue. There can hardly be a Christian discussion of any issue without a reference to the Bible.

I will attempt to demonstrate that the Bible can function as a sensible, important reference point in a discussion of human sexuality, with special reference to sodomy laws. I will attempt to address some of the stories and texts that can so easily be hijacked by opposing sides, each with a claim to exclusive support. We will try to stay clear of the type of exegesis and interpretation that creates far too many intellectual and common sense gaps in biblical interpretation.

Let us then embark upon this journey to see how religion in general and the Bible in particular address this highly emotive issue. My hope is that, after this journey, we will have seen some new perspectives on how, in our discussion, religion in general and the Bible in particular can be sources of light and guidance rather than tools of condemnation and rejection.

The Bible is a product of religion. It emerged within a context of numerous religious traditions and experiences and was influenced by many of them. It may be sensible therefore to take a brief look at the approach to human sexuality in this wider context before we venture into the Bible.

If, as pointed out by Freud, the two vital drives in humanity are the drive for self-preservation and the drive towards procreation—the preservation of the species—then we would expect to see the numerous issues and concerns emanating from these vital human drives significantly affecting human history, and reflected in the literature of the world.

Tom Horner, in a discussion of the sexuality of the Ancient Near East, argues that "the sexual mores of the Bible must have been influenced—tremendously influenced—by the sexual mores of the peoples and nations in whose midst the same Bible was produced." (Gerig: Horner—Jonathan loved David)

He goes on to argue that "among peoples (like the) Babylonians, Egyptians, Assyrians, Canaanites and other peoples, in whose midst the Bible was produced, […]homosexuality existed alongside heterosexuality to a greater or lesser degree." (Gerig: Horner—Jonathan loved David)

It is therefore useful to explore the presence of the human sexuality theme within this Ancient Near Eastern context before we venture into the biblical tradition, and from it all hopefully gather some insights that should guide us in our approach to human sexuality and the sodomy law. We do so ever mindful of Freud's identification of sexuality as one of humanity's two vital drives.

Human Sexuality in the Religion of the Ancient Near East

In much of the pre-Bible literature that constitutes the Ancient Near Eastern (ANE) background to the biblical tradition, sexuality is an experience of both the gods and the mortals. Indeed, the gods of the Ancient Near East were depicted as

highly active sexual beings and were often identified as divine couples.

Ishtar and Tammuz were the divine couple in Mesopotamia, Isis and Osiris in Egypt, Cybele and her young lover were the divine couple in Asia Minor, and in the Ugaritic myth, Anath can sometimes appear as the consort of Baal.

Sexuality is often explored in the religious literature of the ANE through the theme of fertility and consequently, in relation to heterosexual behaviour. One of the places where it is found is in the Akkadian myth of the descent of Ishtar, the goddess of fertility, to the netherworld—the underground world of the dead.

Ishtar's descent throws the process of fertility into chaos. It is put on hold. Fertility of man and beast is under the absolute control of the gods. Sexuality is therefore not alien to the gods. It is a gift that ensures procreation and survival.

The netherworld is not, however, a place free of sexual activity. Even here there can be sexual engagement among the gods. This is reflected in the Akkadian myth of Nergal and Ereshkigal.

In this myth, the refusal of the god Nergal to bow to the god Namtar is counted as an insult and he is obligated to go to the netherworld to apologize to the goddess Ereshkigal, who is the queen of mankind.

Within a somewhat fragmentary text, there is the story of a sexual encounter between Nergal and Ereshkigal. They remained in bed for seven days, a number that seems to suggest the completion of a cycle (cf. Creation story). Nergal's involvement in the sexual act seems to be understood not only as recompense for what he has done wrong, but as a way to reclaim his status as a god.

There is however the question of whether we should read Nergal's sexual encounter with Ereshkigal as punishment. If we do, then the sex act can be interpreted as a negative. It becomes a punishment for those, even the gods, who do not follow the accepted way (cf. Genesis 3 [the temptation of Eve] and Genesis 6 [Noah's Ark]).

The link between the gods and sexuality is also explored in one of the best known pieces of ANE literature, the *Epic of Gilgamesh*, a poem from ancient Babylon (c.2000–1700 BCE). One of the chief characters of the epic is Enkidu, the son of the goddess Aruru. Enkidu seems half beast, half human. He, however, encounters a woman, the "harlot-lass," who has been directed to his favourite water-place to initiate the encounter. After some flaunting by the girl, there is a sexual encounter between the girl and the half-beast.

This seven-day sexual encounter is, however, dramatically transforming. We can again note the seven-day cycle of completion. The transformation is such that Enkidu is rejected by the other beasts with whom he shared company before this. His sexual experience creates a condition that separates him from his fellows (cf. Genesis 3 and Genesis 4 [Cain and Abel]).

This rift provides the opportunity for the harlot-lass to assert a measure of

control over Enkidu.

The power of the harlot-lass is her sexual prowess that enables her to conquer. Hers is the power of sex. There is the suggestion here that Enkidu's sexual encounter has not only created a divide between himself and the wild animals but has also catapulted him into the realm of the gods (cf. Genesis 3:22). But sexuality has also done something critical to the man–woman power relationship: it seemed to have given the woman greater power. (cf. Genesis 3:6)

The sexual experience is here presented as a gateway to the world of the gods. One cannot but compare Genesis 3:22, where new knowledge holds open the possibility of the man and the woman becoming gods. In this section of the Gilgamesh epic, the sexual experience is seen as one that leads to the recovery of and indeed the qualification for divine status.

The sexuality theme in the literature of the ANE is not restricted to myths, epics, and narratives. It is also present in the legal tradition. The primary function of these laws is to set the boundaries within which sexual activity is permitted, and to identify the penalties when these boundaries are violated. It was a question of imposing a measure of control upon one of humanity's primary drives as identified by Freud.

The laws of Eshnunna (c.2000 BCE) and the Code of Hammurabi (1728–1686 BCE) represent two of the surviving legal collections of the ancient world. We also have access to one of the earliest collections—the laws of Ur-Nammu that date from the reign of the Mesopotamian king Ur Nammu, who ruled from 2111–2095 BCE—and a collection of Sumerian laws that date from around 1800 BCE. In these collections, there are laws that seek to regulate human sexual behaviour.

Many of these laws address human sexuality issues. Behind these laws there is the assumption that human sexuality cannot be a free-for-all endeavour. There is the need for laws to control what can be a volatile and disruptive human experience. The young and vulnerable women of the community must therefore be protected from this primary human drive.

The ANE literature we have identified deals primarily with heterosexual behavior. But some of the legal traditions do address homosexuality. There is a Hittite law from c.1700 BCE that states "[i]f a man […] violates his son, it is a capital crime" (section 189c). The same law applies to father/daughter or mother/son incest. (Gerig)

But as Harry Hoffner, who has done a lot of good work in Hittite studies, points out, the man who engages in a homosexual act with his son is guilty of *urkel* (illegal intercourse) because the partner is his son, not because they are of the same sex. The crime is incest, not homosexuality. There is a similar approach in Assyrian law where homosexuality only becomes a crime when it is rape.

Conclusion

There are numerous laws in the literature of the ANE that address the problems that arise because of sexual relationships. They all seem to be built on the assumption that there is the need for abundant space, great constraint, and an overabundance of respect if the many turbulent issues that sexuality can generate are to be managed and prevented from tearing the community apart.

There is the acceptance that homosexuality is an expression of human sexuality. There seems to be no outright condemnation of homosexuality (cf. Gerig).

Human Sexuality in the Biblical Tradition

It is against this religious background and within this literary and religious context with its dominant sexuality themes that we can approach the Old Testament discussion on sexuality. We begin with Genesis 2:18–25, the first creation story. Here there is a reflection on the man–woman relationship. It is depicted as a mysterious relationship. It seems as if man and woman can be so close that the woman is like a rib—that is, part of the man.

This mysterious relationship is the creation of Yahweh (Genesis 2:21). The man had no say in it at all—he was fast asleep when it originated. Out of *ish* (man) comes *ishshah* (woman). This connection results in such a power attraction to each other that the man readily leaves (deserts) his primary household to start a new one with the woman: "Therefore a man leaves his father and his mother and clings to his woman, and they become one flesh" (Genesis 2:24).

The Hebrew word for flesh—*basar*—can also be used as a euphemism for the male sexual organ. If so, then sexuality is introduced into the discussion in this verse. The "clinging" can also be read as a euphemism for sexual activity. As such, therefore, human sexuality is not a curse as we may later read into Genesis 3:16, but rather an integral part of Yahweh's great act of creation.

It is all Yahweh. It is Yahweh who arranges things so that the man can have the woman as his companion. It all comes with a deep sense of innocence: "And the man and his wife were both naked, and were not ashamed" (Genesis 2:25).

The nakedness that can be the precursor to sexual activity is nothing to be ashamed of. It is part of the world created by Yahweh. This reflects a powerful positive understanding of human sexuality. Sexuality is a magnet that draws the man and the woman to each other. The power of the passion keeps them together.

There seems to be more emphasis on companionship and support than on procreation. (This understanding of human sexuality as a "non-procreational" activity is a base for the argument for contraception, and can even lend support to some gay and lesbian relationships.)

When we examine the second creation story, that of the Priestly writer (Genesis 1:1–2:4a), there is not the emphasis on companionship but on increasing

the population. There is the command: "Be fruitful and multiply…"

The command of verse 28, *pheru urebu umile'u et ha'ares* ("be fruitful and multiply and fill the earth"), consists of three imperatives. It is an unconditional command in the Hebrew. Here, sexuality is a gift of Yahweh, a gift to be put to work. It is functional. It is given for one express purpose and this is procreation.

This link between sexuality and procreation means that procreation is Yahweh's gift to humanity that allows us to be partners in creation. With sexuality comes power. But it is not, as in the case of Enkidu in the Gilgamesh epic, the power to enter into the realm of the divine.

The creation story in Genesis 2 depicts the ideal. It sets up the stage where everything is going to plan, Yahweh's plan. We are soon taken off this stage and in chapter three led into the world of harsh (sexual) reality. In 3:1–7, we have an account of the loss of the innocence of Adam and Eve. In 2:25, we see their previous innocence, and in 3:8–23 we are given the consequences of this new development. Both are connected to sexual activity.

Gen. 1–3 contains several understandings of sexuality:

1. It is not a divine attribute—that is, Yahweh (God) does not engage in sexual activity.
2. It is a gift of God to humankind linked to God's act of creation
3. One of its purposes is procreation (Genesis 1:27–28); another is companionship (Genesis 2).
4. It creates a mysterious pull and control on a man that motivates him to leave his primary household and start a new one with a woman (Genesis 2:24).
5. It is a gift of God, yet it can be manipulated by the serpent (evil) with disastrous consequences (Genesis 3:1–7).
6. It is the divine intention that sexuality should not disrupt or destroy humankind's primary pristine state of innocence.
7. Disruption of the state of innocence transforms sexuality into a source of agony and domination.
8. Its primary purpose of procreation now becomes associated with pain.

In all this, there is a measure of ambiguity about sexuality .This ambiguity is evident in our next story in Genesis16:1–6, the story of Abraham, Sarah, and Hagar. There is also in the Abraham story, the conviction that the power of Yahweh can utilize human sexuality for his specific purpose and take it beyond its functional barrier as established by nature. This is reflected in Genesis 18:11—"Now Abraham and Sarah were old, advanced in age; it had ceased to be with Sarah after the manner of women."

Yahweh here is putting human sexuality to work for its primary purpose of procreation when all the signals from the body indicate that this is not possible.

Sexuality can be used by Yahweh as the basic material for miracle (cf. birth of Samuel, Samson; cf. birth of Jesus). He has the power to override the laws of nature.

We must note and retain for discussion this very profound and important point that Yahweh's use of sexuality is not restricted by traditional boundaries, even by those imposed by biology and nature. Christians celebrate this on Christmas Day, in the tradition of the Virgin Birth.

This point, which can be central to the Christian approach to sodomy laws, is reflected in two other relationships. One is that of Moses's marriage to a black woman, a Cushite, which is modern-day Sudan or Ethiopia (Numbers 12). This is done to the consternation of his brother and sister. Then and now, we can understand marriage as sexual engagement.

That Aaron and Miriam do not accept their new sister-in-law could be interpreted as a rejection of a nontraditional sexual relationship. For them, there should be no sexual crossing over into another race or religion. If so, then sexuality, as understood by them, should function along strictly ethnic and racial lines. The great gift of God is in danger of being hijacked to support a narrow racist position.

The writer of the story goes all out to demonstrate that Aaron's and Miriam's rejection of the African wife of Moses is totally against the will of Yahweh. He can deal with differences in relation to human sexuality. The important point is made: God's great gift of sexuality should not be subject to or distorted by race or other human barriers.

There is another story that tells of an unusual interracial sexual relationship that makes the same point, and an even more important point. This is the story of Ruth and Boaz. On the instigation of her mother-in-law, Naomi, young Ruth sets out to seduce the older Boaz: "When Boaz had eaten and drunk, and he was in a contented mood, he went to lie down at the end of the heap of grain. Then she came stealthily and uncovered his feet and lay down" (Ruth 3:7).

Ruth uses her sexuality to gain a measure of control over the older, rich—probably intoxicated—Boaz and so attain a level of economic security for herself and her mother-in-law. The unusual, nontraditional, and devious are all drawn into the sexual act here and the writer does not add any condemnation. If he does not, why should we? It is presented as of the will of Yahweh. Yahweh can deal with the nonconventional activities of human sexuality.

The Story of Sodom and Gomorrah

It is the conviction in the power of God to override the sexual limitations imposed by nature and the acceptance of nontraditional sexual behavior that lead us to the story that has been used to support the rejection of another nontraditional sexual relationship—homosexuality. Let us take a look at this story.

As soon as the word homosexuality is mentioned in biblical studies, we may want to make a beeline for the story of Sodom and Gomorrah. Here is one of the favourite hunting grounds for those who want to use the Bible to condemn homosexual behavior, and find support for the retention of sodomy laws.

This use of this story is fraught with the danger of imposing our convictions and our bigotry about this practice onto the story. This misuse of the story is built on awful exegesis. Indeed, the word "sodomy" as a designation for homosexuality rejects a sensible understanding of the story based on sound scholarship. The story is found in Genesis13:5–13 and 18:16–19:29 and is being used to make *theological* points, not historical or biological ones. It is not making points about sexual orientation.

The ancient ruins of a city might have been the basis for the story about the destruction of Sodom and Gomorrah. Sodom, in particular, is accorded a dreadful reputation. In Genesis 13:13, we are told that the men of the city were "wicked, great sinners against the LORD." The story in Genesis 18:16–19:29 identifies what for the writer are several strands of evil in Sodom. In the Old Testament, this city functions as the epitome of evil.

The evil of the city is identified at several levels. The primary level is the refusal of the people of the city to be hospitable to Lot's guests, who are strangers. The fact that both Abraham and Lot are also strangers in a new land, searching for a place to rest, compounds the guilt of the men (people) of the city. The men of Sodom reject one of the basic elements of human decency, the compassion that should be extended to the stranger (cf. Exodus 23:9; Leviticus 19:33; Deuteronomy 24:19–21).

Genesis 19:4 identifies another level of evil in the list of accusations against the city. It describes the ambush of Lot's house by the men of the city. This can be read as a violation of an Old Testament law that seeks to ensure that the space of one's home is not entered into and destroyed for what may seem to be seen by the intruder as a legitimate cause (cf. Deuteronomy 24:10–11; cf. the need for a search warrant).

The story depicts a state of panic by the men of the city. The panic is generated by the entry of strangers into the city towards the end of the day. The issue here seems to be one of security. We may note the place where Lot first meets the strangers. This is in the *sha'ar* (gate). There is imagery here of a secure city surrounded by a wall and with a gate to monitor and control the entry of strangers.

But *sha'ar* has another meaning in the Old Testament. It is the judicial court, the seat of justice in the city. It represents the assurance of the dispensation of justice for those who live in the city. But it is also the assurance for the most vulnerable, the strangers, the fatherless and the widows (cf. Amos 5:12, 15).

That Lot meets these strangers at the gate and allows them entry into the city

suggest that they have been duly processed, cleared, and pose no threat. There is however the question of authority. Does Lot hold the authority to admit people to the city?

The reaction of the men of the city in Genesis 19:5 suggests that this is not the case. If so, their request of "Where are the men who came to you tonight? Bring them out to us, so that we may know them," may simply be a case of ensuring that the strangers are no real threat to the city.

We may note, however, the use of the time of day. What is *ba'erev* (evening) in 19:1 becomes *halay'lah* (night) in 19:5. This can undoubtedly heighten the idea of a security risk. Who knows what threats can enter the city under the cover of darkness?

This reading of the story would avoid the overloading of the word *yada* (to know) to ensure that there is a sexual interpretation. The word is used in the Old Testament to mean simply acquaintance or as a euphemism for sexual intercourse. The latter meaning is often conveyed in the past tense (English). In the story of Lot and the strangers the verb is in the qal imperfect, translated as future tense. This right away rules out reading *yada* here as sexual intercourse.

Of the dozens of times this verb is used in the Old Testament, only on six occasions is it used as a euphemism for sexual intercourse (Genesis 4:1, 4:17, 4:25, 38:26; 2Samuel 11:16; Jeremiah 2:8). There is no solid reason why Genesis 19:5 should automatically be added to make the seventh.

Neither is there any automatic support for the homosexual interpretation since Lot offers his daughters to the men as a substitute for handing over the strangers. This is a very clever ploy given the fact that Lot is in serious trouble, being seen by the crowd as having violated the security of the city. There is surely a connection between the fact that the crowd consisted (whether only or primarily) of men (19:4) and the offer of two young girls.

Men then were like men now. An attractive woman can be the greatest and most effective distraction even in the case of a grave security matter. Real life and fiction are filled with such stories.

There is yet another dimension to the story that is not often addressed. This is a clash of the two realms, the divine and the human. Genesis 19:1 describes the two strangers as *hamalachim*, which should be translated as messengers (of Yahweh) and not anachronistically as angels.

They are from the divine realm, have been legally cleared at the gate by Lot, and their status should provide automatic clearance of all the security demands. The men of the city, unaware of the strangers' divine status, are bent on subjecting them to the same level of scrutiny and investigation as they would any human stranger entering their town.

The above reading of the story of Sodom and Gomorrah would free it of

any significant input into the sexuality debate, or the debate of this conference. It ceases to be ammunition for those who support the retention of sodomy laws.

We are therefore inclined to accept the argument of D. S. Bailey who informs us that "[t]he homosexual conception of this sin (of Sodom and Gomorrah) first appeared in the second century BC among Palestinian rigorists and patriots and seems to have been inspired by hatred of the Greek way of life."

The Holiness Code

It is in Leviticus 18:22 and 20:13 that we find a condemnation of homosexual behaviour in the Old Testament. Indeed, it is the only condemnation of the practice. Whereas the practice is condemned in 18:22, it is accorded the death penalty in 20:13. One is led to ask the question: Why the condemnation and harsh punishment?

It is surely no coincidence that of the three legal codes in the Old Testament—that is, the Covenant Code (Exodus 21–23), the Code of Deuteronomy (Deuteronomy 12–26), and the Priestly Code (Leviticus 17–26)—the latter is the only one to mention homosexuality and pronounce the death penalty on those who engage in this form of sexual activity. There are a number of reasons for this.

The first reason relates to the context of the final shaping of the priestly material in the Pentateuch. This occurred in Babylon, the very heart of an alien and probably hostile culture. The Jewish community in Babylon was an exiled community, having been plucked away from its roots in Palestine and set down against its will in a foreign land.

Babylon was the symbol of judgement and disgrace. In the midst of these conditions, however, the exiled priests became the rallying point for survival and continuity. These concerns are reflected in the priestly material in several ways. They are reflected through the divine command to the community in the creation story in Genesis 1:1–2:4a. In Genesis 1:27–28a, we read:

> *So God created man in his own image, in the image of God created he him; male and female created he them. And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it[…].*

It is in relation to this text that we can read the strong prohibitions against homosexuality in Leviticus 18:22 and 20:13. This type of sexual relationship could be interpreted as a threat to the very survival of the Jewish community in Babylon. There was therefore no place for homosexual activity in an exiled community that was heavily conditioned by a possibility of annihilation.

This community now obsessed with a sense of survival had to reproduce itself and keep on doing so. Homosexuality in this context was nothing short of self-destruction. It is no coincidence, therefore, that the prohibition against homo-

sexuality now becomes part of the divine law delivered to Moses by Yahweh at Sinai, and the penalty of violation is death.

In order to legitimize and indeed strengthen a prohibition that was seen as crucial for the survival of the Jewish community in Babylon, the Priestly writers, as in the case of the Sabbath law, resort to the well-established Sinai and legal traditions. They draw Moses into the picture as Yahweh's agent and as a pillar of support that the community dare not question. The law against homosexuality is pronounced and the community can only follow.

There is little room for any different approach. Undoubtedly, there must have been many examples of this sexual expression within Babylon, and even within the Jewish community. There would hardly be a law against homosexuality unless this type of sexual relationship was present within the community.

There would hardly be laws about driving on a particular side of the road unless there were vehicles to drive. The law, according to the priestly tradition, laid down the rules. There was to be no variation. This would be met by death.

Homosexuality is deemed to be contrary to traditional sexual behaviour and would therefore be diametrically opposed to the Priestly traditional approach to life. Given the Priestly understanding of life and the world, this type of sexual activity could not be accommodated or tolerated. The strict right/ wrong, clean/unclean approach of Priestly thinking left no room for this. This Priestly factor when applied to human behaviour in general and homosexuality in particular leaves no room for deviation in thought or practice.

Summary

In the Old Testament, we have found only two prohibitions against homosexuality. These are in Leviticus 18: 22 and 20:13, with the latter having death as the penalty for breaking this law. These address a specific set of conditions and so cannot be extracted from the context of the Priestly writer and transformed into a universal edict like the laws of the Medes and Persians. They cannot be transformed into a base for the retention of sodomy laws.

They must be held alongside the understanding of Yahweh as a God who can deal with untraditional sexual relationships, as in the cases of Moses and Ruth, and can even adjust nature and the body clock to do so, as in the case of Abraham and Sarah.

We go into our discussion of the New Testament response to homosexuality with the reminder that emerges out of our discussion of human sexuality within the Old Testament.

New Testament

When we move into the New Testament, the references to homosexuality

are few. There are no references in the Gospel tradition. In the teachings of Jesus, Sodom and Gomorrah stand as symbols of evil. In Matthew11:23–24, there is a reference to Sodom that reflects the traditional view of an evil city. To emphasize how far from God the city of Capernaum is, Sodom is cited as having a better chance of being saved than Capernaum. These references cannot be treated as rejection of homosexual activity and as support for sodomy laws.

A lack of any references to homosexuality in the teachings of Jesus leaves somewhat of a blank in determining how Jesus would have treated such persons. There is little room for conjecture. The nearest we can get is looking at how he relates to persons who were engaged in nontraditional sexual behavior.

One such person is mentioned in Luke 7:37–38:

> *And behold, a woman of the city, who was a sinner, when she learned that he was at table in the Pharisee's house, brought an alabaster flask of ointment, and standing behind him at his feet, weeping, she began to wet his feet with her tears, and wiped them with the hair of her head, and kissed his feet, and anointed them with the ointment.*

That the woman is described as "a woman of the city, who was a sinner" suggests that she was probably a prostitute. The story reflects St. Luke's presentation of Jesus as one who welcomes the sinful and the outcasts into the kingdom. Here Jesus accepts the woman in spite of her nontraditional/unaccepted sexual behaviour. His pronouncement of the forgiveness of her sins is the culmination, not the start, of the acceptance process.

There is a story in John 4 that tells of Jesus's dealing with someone involved in nontraditional sexual behaviour. It is a story about Jesus's encounter with a woman from Samaria at a well. She is described as having had a number of marriages—and is now simply "shacking up" with someone's husband. The evidence is clear; she should have been condemned strongly by Jesus. But she is not. St. John refrains from adding a line of condemnation, in keeping with his understanding of Jesus.

Here, as in Luke 7, Jesus is presented as dealing with nontraditional sexual behaviour without condemning the person involved to hellfire. A lack of condemnation does not, of course, translate into condoning the behaviour. Of course, it can be argued that in these stories we are dealing with deviant heterosexual behaviour and not homosexuality. But it seems to me that there is surely a pattern of response from Jesus that does not lead him down a road of bitter condemnation.

The same cannot be said of St. Paul in his dealing with homosexuality. One, however, must take seriously the context within which Paul's pronouncements on the issue are made. The context is a Greek culture that had become notorious for lax sexual behaviour. Romans and I & II Corinthians can be read as a response

to this context in which the Christian understanding of human sexuality was a minority opinion.

St. Paul in these writings clearly identifies the popular way that is diametrically opposed to the new Christian way. In Rom. 1:18–32, there is an extensive list recounting the behaviour of those who follow the other way. Paul mentions:

1. Suppression of the truth (verse 18)
2. The worship of images (verse 23)
3. The dishonouring of their bodies among themselves (verse 24)
4. The exchanging of the truth about God for a lie (verse 25)

And then the accusation in verses 26 and 27:

> *For this reason God gave them up to dishonorable passions. Their women exchanged natural relations for unnatural, and the men likewise gave up natural relations with women and were consumed with passion for one another, men committing shameless acts with men and receiving in their own persons the due penalty for their error.*

How should we read these verses? Should these be read as simply another element of unacceptable conditions being cited by St. Paul, or are they to be singled out as the worst of the elements?

There is surely no evidence to support the latter position. The whole unit, verses 18–27, constitutes a statement about the threats to the new Christian way. One can compare here the position of St. Paul, in the context of a struggling group of Christians in Rome, with that of the Priestly writer struggling within the Jewish community in Babylon for identity and survival.

There is an issue of survival at work in this section of Romans. The Church can only survive if there is a total rejection of the way of the non-Christian. The survival motif is reflected in references to "the wrath of God" (verse 18) and in the phrase "God gave them up" (verses 24 and 26), which is a euphemism for self-destruction.

St. Paul argues that the behaviour of the non-Christians, which includes homosexuality, contributes to the wrath of God and self-destruction. In other words, the behaviour of non-Christians, like that of the Babylonians, must be rejected if the Church at Corinth, like the Jewish community in Babylon, is to survive. If the concern here is primarily one of survival, then it may be difficult to isolate one element of the threat to survival and treat it as St. Paul's primary concern.

There is yet another dimension to the denouncing of homosexuality in Romans that cannot be overlooked. As early as 226 BCE, there was a Roman law, *Lex Scantinia*, that made homosexuality a punishable offence. Although it has been argued that this law was not applied with any rigidity, its existence indicates the legal position of the Roman authority towards homosexuality. We have not

ascertained how rigidly the law was applied in the days of Paul, but the presence of the law could have led Paul to denounce homosexuality, given his advice in Romans 13 to the Christians in Rome, asking them to be good and obedient Roman citizens.

When we turn to 1 Corinthians 6:9–10, after stating that the unrighteous will not inherit the kingdom of God, St. Paul goes on to identify them:

> *Do you not know that wrongdoers will not inherit the kingdom of God? Do not be deceived! Fornicators, idolaters, adulterers, male prostitutes, sodomites, thieves, the greedy, drunkards, revilers, robbers—none of these will inherit the kingdom of God.*

The word of interest here is the Greek word *arsenokoites*, which is rendered "male prostitutes" in the Revised Standard Version. This word means someone who engages in homosexual activity. This translation (New Revised Standard Version) links it to prostitution.

That this type of behaviour is one mentioned among many that are to be avoided by Christians again seems to suggest that the homosexual is not identified as being either worse or better than the others. It, however, remains a practice that is to be rejected by the Christians at Corinth.

In I Timothy 1:8–10, there is a discussion on the purpose of law. It exists, according to the writer, not for the just, but for the lawless and disobedient, for the ungodly and sinners, for the unholy and profane, for murderers of fathers and murderers of mothers, for manslayers, immoral persons, sodomites [*arsenokoites*], kidnappers, liars, perjurers, and whatever else is contrary to sound doctrine.

The list is long, if not impressive, and is structured around the Ten Commandments. It cites what distinguishes the non-Christian from the Christian. Homosexuality is mentioned using the popular understanding of Sodom. But it is one among many. It is not identified as the worst among a batch of practices that should be rejected by Christians.

Summary

This survey of the biblical references to homosexuality indicates that such references are sparse. When they do occur, they do so within a context where the primary concern seems to be the survival of the group that is under attack. As such, the practice becomes one of threats to that survival.

What our survey of the biblical literature demonstrates is the limited number of times homosexuality is addressed in the Bible. In the five times this is done, the context is the driving force in the interpretation. That there are cases of nontraditional sexual encounters that are not condemned surely indicates a conviction of the writers of the Bible that there is space in God's relationship for the nontraditional.

Our journey through the Bible does not provide us with any overwhelming rejection of homosexuality. Given the varied contexts within which the practice is rejected, it is difficult to treat these as providing any universal condemnation.

Context is the key to helping us to understand the rejection of homosexual behaviour that we find in Leviticus, Romans and I Corinthians, and to a lesser extent, I Timothy. It seems to me that to let go of the context is to convert these references into the type of weapon against homosexuals that they were not intended to be.

We can therefore conclude:

1. The writers of the Bible understood human sexuality as a gift of God.
2. Like most societies, ancient and modern, they acknowledged the need for laws and traditions to control, monitor, and direct the power generated by human sexuality.
3. Heterosexual behaviour is treated as the norm as ordained by God.
4. There is no reference to homosexuality in the Gospels.
5. Homosexuality and its sexual expression are addressed only on two occasions in the Old Testament (Leviticus), and three in the New (Romans, I Corinthians, I Timothy).
6. There are Old and New Testament nontraditional sexual relationships that are not condemned (Moses's marriage to a black woman, Ruth's seduction of Boaz, Jesus's acceptance of the affection of a prostitute, and his making the woman with the many husbands into an evangelist).

The Caribbean Context

All this would suggest that what many people see in the Bible as providing unequivocal support for the retention of sodomy laws does not do so. When placed in their appropriate context, the texts do not provide this support.

If we accept that context determines interpretation and response, as I have argued, then we cannot ignore the context as we seek a better understanding that will guide our response to the issue. Just as we take this on board in our interpretation of the Bible, and in many other areas, we must do so as we discuss the sodomy laws in the Caribbean.

The Caribbean context, with its varied and complex cultural layers, is as important for any discussion on the region's approach to sodomy laws, as the biblical context is for understanding and interpreting the biblical text.

At the start of this presentation, we asked why the former English colonies all maintain sodomy laws on their statute books. We put forward the argument that the religious culture of the region may be responsible. We went on to examine one of the pillars of this religious culture, and discovered that the Bible is not as strong a support for these laws as is popularly believed and popularly claimed.

So we must venture beyond the Bible and beyond religion. When we do so, we are left with several strands of Caribbean culture that do not lend support to the removal of the laws. There still remains, therefore, a strong resistance to the removal of the sodomy laws, not with any argument from the legal tradition but from several more emotive elements of Caribbean culture. Not the least of which is its sexual culture.

It is still the wish of almost every Caribbean man and woman to be a parent and, eventually, a grandparent. We all know the teasing we got from our parents, telling us it is time we give them a grandchild. We do the same to our children. Having children is central to Caribbean life. As in the work of the Priestly writer, the one act in the minds of many Caribbean parents that stand as a barrier to having grandchildren is homosexuality. This is our second reason for the reluctance to oppose the sodomy laws in the Caribbean.

I think that the reluctance of the former English colonies of the Caribbean to abolish the sodomy laws may more be a cultural one rather than a strictly legal, or even a moral or religious one. Even the discussion of the laws should not be extracted from context.

The cultures of the world, which provide for their members a particular understanding of the world, all travel at their own pace. The pace of one cannot be transformed into a universal law to which all others must comply. This can be difficult positions to accept.

This conference is a continuation of the discussion of the sodomy laws in this region. We must accept that participants are not at the same spot. However, when we do not engage in discussion, we resort to words and actions that speak of rejection and discrimination—even annihilation and destruction—and justify these actions.

We speak in religious language of hellfire and damnation. We become stuck in the mud of intolerance where no one can make progress. We forget that the two virtues so soundly established in the Old Testament and proclaimed by Jesus in the New are love and compassion.

I strongly believe that we should continue the discussion. We need to move beyond intolerance and only discussion can help us to do so. We should not close the doors to any side, to any opinion. This region is going to take some time to work through the issue. We must take this time and protect our freedom to travel at our pace. But we cannot close the door to discussion.

As a student of the Bible, I am intrigued that the writers of the Exodus story claim forty years of travel from Egypt to the land of promise. This has more to do with an understanding that it takes time—and a lot of it—to make a transition from one condition, one understanding, to one that is the complete opposite, than with physical distance.

Here is a model for us as we grapple with the issue of the sodomy laws here in the Caribbean. Let us not see the pace of the journey as a waste of time or as a failure. It surely is not. No change in thinking is easy. But change is always possible.

Most Rev. Dr. John Holder was the Anglican Archbishop of the West Indies for eight years, until his retirement in February 2018. He has held many scholarly and teaching roles in the Caribbean and around the world, and authored numerous publications. He has also served as chair or member on many esteemed boards and committees, including a tenure as chairman of Interfaith group—HIV/AIDS Commission from 2003 to 2008.

Special Address

Justin Pettit, Commonwealth Secretariat

I would first like to thank Maurice, Father Sean, and the other organizers for inviting the Commonwealth Secretariat to make an intervention at this important and timely conference. I am grateful for the opportunity.

Discrimination undermines the dignity, equality, and rights of individuals and groups wherever it occurs. It can make them doubt that they are fully part of the human family. History is replete with examples of discriminatory treatment and its consequences. In short, unequal treatment results in political, economic, and social exclusion, disproportionately burdening the poor and marginalized. It is also a driver of violence, unrest, and conflict.

In many parts of the world, recent years have seen a growing culture of respect for LGBTI persons, and their ability to fully participate in society is protected by law. In other parts of the world, there is rising antagonism towards the LGBTI community, who continue to suffer from discrimination by multiple actors in various forms and fora.

It is broadly accepted that the effects of ongoing discrimination and exclusion are deleterious to both individuals and society, with victims often facing harassment, ill treatment and violence, and rights violations in accessing healthcare, education, employment, and housing, while nationally they lead to decreased productivity, loss of economic output, and increased health and police costs.

The Commonwealth has a mandate to address equality and non-discrimination as they are enshrined amongst our core values and principles in the Commonwealth Charter. The Commonwealth is committed to equality and respect for the protection and promotion of civil, political, economic, social, and cultural rights, including the right to development, for all without discrimination on any grounds as the foundations of peaceful, just, and stable societies.

The Secretariat's approach to addressing sexual orientation and gender identity has been one which seeks to build the capacities of national institutions, including parliaments and national human rights institutions, and to assist in creating national spaces for dialogue. This continues to be the most sustainable and durable approach for the Secretariat. It is for this reason that we responded positively to attending this conference since this dialogue with faith leaders presents a part of the discourse which is evolving.

I want to briefly speak about the experience in Seychelles as dialogue was at the centre of the process and because it is the most germane example to the discussion we will have over the next two days. Seychelles is a small country of 115 islands in the Indian Ocean. In 1955, British authorities introduced a law

criminalizing homosexuality, making it punishable by up to 14 years in prison. This law remained on the books until June 2016.

During its Universal Periodic Review before the UN Human Rights Council in 2011, the Government of Seychelles accepted recommendations to review provisions of the penal code criminalizing homosexuality. After no action towards this end, the government again received recommendations to review the penal code at its January 2016 Universal Periodic Review. One month later at his State of the Nation address, President James Michel announced that the government had decided to repeal the law, describing it as an "aberration" in Seychelles' "tolerant" society and noting that although the law was not enforced, it was in conflict with the constitutional protections of equality and non-discrimination.

The decision was not without opposition, and the objections were familiar. It was precisely because of this that the government did not want the decriminalization process to be closed and unilateral with a predetermined conclusion. The Attorney General submitted an amendment to the penal code to the National Assembly so it could begin the legislative process. Upon receipt of the amendment's text, the National Assembly undertook an inclusive and participatory approach, with its members seeking the views of their constituents.

The National Assembly also initiated dialogue with faith leaders and religious communities. Specifically, the National Assembly reached out to the Interfaith Council, which was formed by the leaders of all religious denominations in Seychelles to promote interfaith harmony and to promote a society where each citizen is valued and can contribute to improve society. The Interfaith Council is based on the premise that mutual understanding and inter-religious dialogue constitute important dimensions of a culture of peace.

National consultations on the two most populous islands were organized by the National Assembly for direct engagement with the Interfaith Council, the LGBTI community, senior government officials and civil society to discuss the religious arguments surrounding amendment of the penal code. The dialogue was open, frank, and honest. Participants shared their attitudes, hopes, and concerns on the proposed penal code amendment. Discussions covered many issues, but generally focused on the legislation, touching on morality, the appropriate distinction between crime and sin, and the interaction and dividing line between law and belief. This consultation and the emphasis on dialogue were the most crucial aspects of the decriminalization process in Seychelles.

After the consultation, the Bishop of the Diocese of Port Victoria called on members of the National Assembly to "vote according to their informed conscience, free from all irrelevant external interference" and only taking into account "the impact [the] vote will have on the future of [Seychelles] society." Parliament then passed the amendment to the penal code in May. The president

assented shortly after.

Decriminalization of consensual same-sex relations between adults is only one step of a broader and long-term approach to ensuring equality and non-discrimination for all in Seychelles. The dialogue initiated on faith and law now serves as a guide for continued promotion of greater understanding amongst diverse communities and for addressing misperceptions and misconceptions about freedom of religion or belief and discrimination based on immutable characteristics.

Endeavours such as this conference strike me as a reasonable starting point for finding mutual understanding and upholding human dignity and equality for all, where diversity is not just tolerated but fully respected and celebrated. This requires long-term investment, and more importantly, dialogue, which is why I am especially heartened by the efforts of Maurice and Father Sean through this conference to give all the space to voice their opinions.

Justin Pettit is an Officer in the Human Rights Unit at the Commonwealth Secretariat. His work focuses on the international human rights machinery, strengthening national institutions, and issues surrounding implementation of human rights standards. He holds a PhD in Law from the University of Essex.

Address by Lord Anthony Gifford, Q.C.

Archbishop Dr. John Holder,
Father Sean Major-Campbell,
Mr. Justin Pettit,
Conference delegates, brothers and sisters,

I warmly congratulate the organizers of this conference. You have shown courage and vision in seeking to draw in our churches into the important debate on whether certain laws, which penalize certain adult and consensual sexual activities, should be repealed. Rather than hold up placards on opposite side of the road (which I have done), you are seeking a dialogue. You have understood that there is a breeze of change in our hot Jamaican atmosphere on this topic. Bishop Howard Gregory of Jamaica and the Cayman Islands has recently added a powerful puff of wind, and I commend him on his statement that the private sexual activities of adults should not be the concern of the law.

I thank you for including me in this dialogue. I am not a member of any church, but I passionately believe in the need for good to triumph over evil, and for love to prevail over hate. I believe that each of us can, through our activities, change the balance in favour of goodness and love. A pastor who I met as a teenager encouraged me to put an extra O in the word *God* if I wanted to understand the simple message of spiritual teachers. I have found that simple message illustrated time and again in the actions of so many Jamaicans in this country, which has been my home for nearly 30 years, though I am also constantly disappointed by the manifestations of violence and hate.

What I bring to this debate is my experience in working for the rule of law as an attorney-at-law in different countries. I will try to explain what I mean by the rule of law. It is not the same as being governed by laws. Laws can be repressive and immoral. Apartheid in South Africa was supported by a complex regime of laws. The persecution of Jews in Nazi Germany was regulated by laws passed by an elected government. But since World War Two, we have seen the emergence of a new kind of law, the law of human rights and fundamental freedoms, which is now enshrined in international covenants and in constitutions all around the world. This kind of law recognizes the dignity of every single human being, and protects that dignity in clauses that guarantee freedom of speech, freedom of association, the right to liberty and security, and so on. This kind of law has effect to protect freedom even when the democratic majority does not want it protected, and even when the freedom in question is offensive to some or even most people's religious beliefs.

Look at the case of *Loving v. Virginia* in 1967. The laws of Virginia and many other states forbade interracial marriages. It was a felony punishable by five

years' imprisonment. Richard Loving was married to Mildred Jeter in another state and wanted to move to Virginia. They were arrested and convicted. The judge justified the law by saying,

> *Almighty God created the races white, black, yellow, and red, and He placed them on separate continents. And, but for the interference with His arrangement, there would be no cause for such marriage. The fact that He separated the races shows that He did not intend for the races to mix.*

Delegates here can guide me as to the scriptural basis for that statement. The point is that the judge believed it, and it supported the prejudice of many in Virginia. The Supreme Court struck down the Virginia law, and has more recently made this comment about the *Loving* case: "[t]he nature of injustice is that we may not always see it in our own times." Think about those words: will later generations wonder why we did not see the injustice in our own times?

I well remember the case of Jeff Dudgeon, which has been referred to. It was at the height of the sectarian violence that tore Northern Ireland apart and caused many deaths around the U.K. The Protestant chief spokesman was the Reverend Ian Paisley, who launched a campaign to "Save Ulster from Sodomy." The minority population were Roman Catholics who agreed with the Protestants about this, if nothing else. There was no way that a referendum or a vote in the Northern Ireland Parliament would change the law, and I am firmly opposed to a referendum in Jamaica for the same reasons. It is not for the majority to determine the human rights of a minority.

The European Court of Human Rights said:

> *In the personal circumstances of the applicant, the very existence of this legislation continuously and directly affects his private life, which includes his sexual life. Either he respects the law and refrains from engaging—even in private with consenting male partners—in prohibited sexual acts to which he is disposed by reason of his homosexual tendencies, or he commits such acts and thereby becomes liable to criminal prosecution.*[1]

The court recognized the strength of feeling on the issue, but said:

> *Although members of the public who regard homosexuality as immoral, may be shocked, offended or disturbed by the commission by others of private homosexual acts, this cannot on its own warrant the application of penal sanctions when it is consenting adults alone who are involved.*

Many years later the Constitutional Court in the new South Africa reached the same conclusion that the anti-sodomy laws were unconstitutional. The judges made an observation about sexual privacy that I find compelling:

Privacy recognises that we all have a right to a sphere of private intimacy and autonomy which allows us to establish and nurture human relationships without interference from the outside community. The way in which we give expression to our sexuality is at the core of this area of private intimacy. If, in expressing our sexuality, we act consensually and without harming one another, invasion of that precinct will be a breach of our privacy.

The South African court has also made an important statement on the interplay between religious belief and the rule of law. In its judgment in a gay marriage case, *Minister of Home Affairs v. Fourie,* it said:

It is one thing for the Court to acknowledge the important role that religion plays in our public life. It is quite another to use religious doctrine as a source for interpreting the Constitution. It would be out of order to employ the religious sentiments of some as a guide to the constitutional rights of others.

In the open and democratic society contemplated by the Constitution there must be mutually respectful co-existence between the secular and the sacred. The function of the Court is to recognise the sphere which each inhabits, not to force the one into the sphere of the other. Provided there is no prejudice to the fundamental rights of any person or group, the law will legitimately acknowledge a diversity of strongly-held opinions on matters of great public controversy. I stress the qualification that there must be no prejudice to basic rights. Majoritarian opinion can often be harsh to minorities that exist outside the mainstream. It is precisely the function of the Constitution and the law to step in and counteract rather than reinforce unfair discrimination against a minority. The test, whether majoritarian or minoritarian positions are involved, must always be whether the measure under scrutiny promotes or retards the achievement of human dignity, equality and freedom.

The Jamaican Constitution guarantees "respect for and protection of private and family life and the privacy of the home." The International Covenant on Civil and Political Rights, which Jamaica has ratified, guarantees that "nobody shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence." The Inter-American Convention on Human Rights, which we have also ratified, follows the same formulation. All the constitutions around the Caribbean and elsewhere guarantee that private sphere that all of us would want for ourselves.

So, it was not surprising to me that in the first and only case on the anti-sodomy laws in the Caribbean, *Orozco v. Attorney General of Belize*, the Chief Justice struck out the law and upheld Mr. Orozco's rights to dignity, privacy, and equality. He said:

> *It needs to be made pellucid that this Claim stands to be decided on the provisions of the Belize Constitution and in this regard, the Court stands aloof from adjudicating on any moral issue. The source of the Court's remit is firmly grounded in the Constitution itself which reflects the separation of powers.*

When you look at the reasoning of cases from around the world—Europe, Africa, the United States, and now the Caribbean—what emerges is the right to love. My experience in representing gay and lesbian clients in different countries is that their love for their partners is as deep and as real as the love that we would wish for ourselves. I recall a client who disappeared eight years ago in Montego Bay, presumed dead by the police because he was known to be gay, and I recall the agony that his partner in London continues to suffer. If we recognize that everyone has the right to love, and to express that love with sexual interaction, we will not only uphold the Constitution, but we will also, I believe, uphold the core principles of the faiths that are represented here.

I wish you a wonderful conference and ask you to recognize and uphold the right to love.

Called to the Bar of England and Wales in 1962, Lord Anthony Gifford, Q.C., is also a member of the Northern Ireland Bar and in 1990 joined the Jamaican Bar, where he regularly appeared before the Privy Council in cases of criminal law, tort, labour law, and defamation. Lord Gifford has been Counsel in the appeals of the Birmingham Six and the Guildford Four; Dudgeon v. UK (ECtHR) *and in many other human rights cases.*

His work in Jamaica is as Senior Partner in the firm of Gifford Thompson & Bright, attorneys-at-law. Lord Gifford continues an active practice in law in both Jamaica and Britain.

[1] Paragraph 41

Foreword

The Hon. Michael Kirby AC CMG

From faraway Australia, I send greetings of peace and friendship to the Commonwealth Caribbean. I welcome the conference in Jamaica called to discuss the role (past, present, and future) of faith communities across the region in ending the criminalization of citizens based on their sexual orientation and gender identity. This is an initiative to be welcomed on at least three levels:

- *Spiritual:* Because it is necessary to reflect the love and mutual respect for one another that lies at the heart of most of the world's religions, but particularly for Christians who follow the loving message of Jesus Christ;
- *Political:* Because the current persistence of colonial laws targeting sexual minorities and their sexual acts constitute a serious overreach of the proper function of the criminal law in a modern, diverse, and democratic society; and
- *Healthcare:* Because the retention of such laws impedes the messages essential to reducing infections with HIV, the virus that causes AIDS. Moreover, it impedes access by those infected to prompt treatment, which speeds the reduction in infections in the wider society.

I welcome the leadership of bishops of the Anglican tradition in supporting, and participating in, this conference. I myself was raised in the Anglican tradition. I am proud to be a member of this global community. Because of its history, the Anglican Church has always been a place of diversity and dialogue for those of the High Church and those of the Evangelical tradition.

This conference convenes on the 50th anniversary of the first steps taken in England and Wales to repeal the anti-gay sodomy laws that were exported throughout the British Empire. That repeal followed the Wolfenden report, which found that the attempt to enforce such laws against LGBT citizens constituted an overreach of the criminal law. Criminal law should be confined to serious wrongs involving public activity and a complaining victim. They should not snoop into private conduct in people's bedrooms where consenting adults are involved. To do this is a serious excess of governmental power. Gradually this principle has been accepted in countries that were once part of the old British Empire: the U.K., Ireland, the United States, Canada, Australia, New Zealand, South Africa. But a logjam has arisen in securing reform in the Caribbean.

In 2009, I participated in the Eminent Persons Group (EPG) on the Future of the Commonwealth of Nations. Our chair was Tun Abdullah Badawi, an Islamic scholar and former prime minister of Malaysia. Our rapporteur was Sir Ronald Sanders, a distinguished Caribbean diplomat. Unanimously, the EPG recommend

that heads of government of all Commonwealth countries "should take steps to encourage the repeal of discriminatory laws," including those targeted at LGBT citizens. We proposed a *Charter of Commonwealth Values,* which has been adopted and signed into force by the Queen. It upholds the principle of equality without discrimination. The time has come for the Commonwealth Caribbean to act on that value.

I welcome the political opening for action proposed by the Government of Jamaica. However, calling for a referendum is the wrong path in a parliamentary democracy. If a referendum to abolish the "White Australia" policy had been held at the time when Australia's parliament began to demolish discriminatory laws against people on the grounds of race and skin colour in 1966, it would not have been carried. Discrimination on grounds of race is unscientific. But it has, like slavery, some biblical supporters. In Australia, our parliament did the right thing. It did not introduce an obstacle of a referendum. Where unscientific prejudice exists, it should be removed from the law. That still leaves those in faith communities to hold to their beliefs. But it removes enforcing those beliefs on others who believe differently.

Finally, there are strong practical reasons for change. Strong UN data demonstrates that countries that criminalize LGBT people have higher levels of HIV infection. This is for the simple reason that criminalization drives people into the shadows. It impedes their access to advice, knowledge, and support. It restrains them for seeking out treatment and care. Yet that treatment reduces the spread of HIV throughout society. This is therefore a step that should be taken.

For 40 years in Australia, I have held high constitutional offices. During the whole of that time, I have been supported by my partner, Johan. Such support is good for health and for truth in society. We should turn away from prejudice that science does not sustain. We should return to the central message of our religion: love for one another. We should abandon the overreach of criminal law. We should contribute to reducing the spread of AIDS and the even greater epidemic of discrimination.

Michael Kirby is an international jurist, educator, and former judge, serving as a Justice of the High Court of Australia from 1996 to 2009. He has undertaken many international activities for the United Nations, the Commonwealth Secretariat, the OECD, and the Global Fund Against AIDS, Tuberculosis and Malaria. His recent international activities have included member of the Eminent Persons Group on the Future of the Commonwealth of Nations (2010–11); Commissioner of the UNDP Global Commission on HIV and the Law (2011–12); and Member of the UN Secretary-General's High Level Panel on Access to Essential Healthcare (2015–16).

SECTION ONE

THE ANGLICAN CHURCH AND DECRIMINALIZATION

Decriminalization in the United States of America and LGBTQI equality in The Episcopal Church

Rev. Winnie Varghese

Dates of Key Resolutions on the Recognition of Homosexual Rights in the Episcopal Church:

1976 Recognize the Equal Claims of Homosexuals: The 65th General Convention recognizes that homosexual persons are children of God who have an equal claim upon the love, acceptance, and pastoral care of the Church.

1976 Support the Right of Homosexuals to Equal Protection of the Law: The 65th General Convention expresses its conviction that homosexual persons are entitled to equal protection of the laws with all other citizens.

1976 Recognize the Equal Claims of Homosexuals

1979 Express Gratitude to Groups Ministering to Homosexuals

1979 Recommend Guidelines on the Ordination of Homosexuals

1982 Reaffirm the Civil Rights of Homosexuals

1985 Urge Dioceses to Reach a Better Understanding of Homosexuality

1988 Support Exploration of Causes of Suicide Among Gay and Lesbian Youth

1988 Continue Work and Consultation on Questions of Human Sexuality

1988 Decry Violence Against Homosexuals

1988 Urge Local Discussion and Report on Human Sexuality

1988 Commend Those Who Have Cared for Persons With AIDS

1988 On the Topic of the Church of England's 1987 Resolution on Sexuality Request the Diocese of Sydney to Reconsider Its Action Relating to Homosexuals

1988 On the Topic of the Canon on General Provisions Respecting Ordination

1991 Dialogue, and Direct Bishops to Prepare a Pastoral Teaching

1991 Amend Canon I.1.2 [Membership of the Joint Commission on AIDS]

1991 Deploy Monogamous Homosexual Priests Within Limitations

1994 Call on U.S. Government to Extend Benefits to Gay and Lesbian Couples

1994 Reaffirm Resolution on Equal Protection Under Law for Homosexuals

2000 Continue Dialogue on Human Sexuality

2003 Consent to the Election of the Bishop Coadjutor-elect of New Hampshire

2003 Consider Blessing Committed, Same-Gender Relationships

2006 On the Topic of Human Rights of Homosexual Persons

2006 Oppose Criminalization of Homosexuality

2009 Reaffirm Participation in the Anglican Communion While Acknowledging Differences

2012 Urge Repeal of Federal Laws Discriminating Against Same-Sex Marriage

2012 Authorize Liturgical Resources for Blessing Same-Sex Relationships

2015 Amend Canon I.18 (Of the Solemnization of Holy Matrimony)

2015 Support LGBTI Advocacy in Africa

2015 Authorize for Trial Use Marriage and Blessing Rites Contained in "Liturgical Resources I"

The United States is not a member of the Commonwealth. We are the outliers at this conference, and yet, the influence of the United States in the world, both economically and culturally, and the Episcopal Church in the Anglican Communion cannot be overlooked. We, too, inherited anti-sodomy laws from British criminal law, and we, too, have only recently debated their efficacy and appropriateness. Until 1962, sodomy was a felony in the United States. Illinois was the first state to adopt the recommendation of the Model Penal Code to legalize consensual sodomy. It was only in 2003, 14 years ago, that anti-sodomy laws were taken off the books across the country by an act of the Supreme Court of the United States.

Sodomy is a horrible way to talk about the equal rights of LGBTQI people, but it was—and is—anti-sodomy laws that legally allow harassment and discrimination of LGBTQI people and in many instances imprisonment and prosecution. It is these same laws that create a culture of homophobia and hiding that keep us from completely seeing LGBTQI people and their lives in society.

By the time of the 2003 *Lawrence v. Texas* case, many jurisdictions in the United States either did not enforce or selectively enforced anti-sodomy laws, but the existence of these laws created a climate of fear and intimidation for all LGBTQI people in the United States.

I was a college chaplain for 10 years on two college campuses: UCLA and Columbia. In that time, I baptized and confirmed many students. It was a great privilege and learning opportunity for someone like me—a Christian from a Christian family, and a liberal Christian disinclined to seek out new disciples.

At Columbia, a young man who had attended a few services came to my office and said he wanted to be baptized. I had assumed he *was* baptized. I assume everyone who comes to church is baptized. I was wrong. I asked him about his background, and why he wanted to be baptized now and with us. He said, "I knew I wanted to be a Christian, and Catholic wasn't it. So I wrote down all of the other kinds of Christians and I researched their beliefs, and I crossed them off when I hit something I just couldn't agree with, and you all were left. You sucked the least."

As I got to know him over the years, I learned that it was the broad-mindedness of our church that he valued, and I learned that he was not heterosexual. He never told me that, though. Very few students ever did unless they were going through a difficult experience with their family or had been put through some kind of conversion therapy and were still living with the physical and emotional scars.

Somehow our young adults, many raised in the church and many who had worked hard to build a strong and healthy sense of themselves, knew that the church should accept them as they are despite the law, despite the church's own teachings.

It is important to note that the law did not change until 2003 in Texas, the state where I was born and raised. But in California and New York, where I worked as a young priest in the early 2000s, the law changed in the late 1970s. I, like so many other young LGBTQI people, moved to a part of the country where I was not subject to arrest. This created ghettos of cities and states in which LGBTQI people were safe, and places where sometimes people chose to live to avoid us. We called that "Family Values" in the 1980s and 1990s.

The Episcopal Church recognized in 1976 that "homosexual persons are children of God who have an equal claim upon the love, acceptance, and pastoral

care of the Church" and that "homosexual persons are entitled to equal protection of the laws with all other citizens" because in 1973 The American Psychiatric Association took homosexuality out of the *Manual of Mental Disorders*. These resolutions were passed because of the brave and diligent work of Episcopal activists. The Episcopal Church also first pledged to work for the civil rights of "homosexuals" in that year.

I note these two sets of dates because I think Anglicans think that the Episcopal Church surged forward on LGBTQI rights in response to a decadent and liberal American culture. It is important to note that the Episcopal Church was making claims that defied the law in the majority of states at that time. We were working for a change in United States law and standing, as a church, on the side of people ostracized by both the law and society.

The AIDS crisis in the 1980s and 90s was a point of crisis for the Episcopal Church. Many Episcopalians, lay and ordained, "came out" in that time as the political slogan "silence equals death" and the ethical imperative to live lives of "integrity" became the activist language. I came out in 1989 as a 17-year-old who could not have imagined that being closeted was an ethical or moral choice for a queer Christian. Like the students I would serve a decade later, I assumed that the prayerbook and gospels I read were true and applicable to me. It felt like a matter of my own salvation to be honest with myself about who I was and to work to accept all of myself as being in the image of God. For me that meant a break with family and with personal ambition, a radical shift in thinking about how to be safe and productive in a world in which I had assumed I would help others from a position of some privilege.

My path was much easier than many, but when I came out, I lived in a state in which I could be arrested in a raid on a gay coffee shop, bar, or club. If we were harrassed on the street or threatened by strangers, we could not turn to the police. Meeting as a campus LGBTQI group was protected and yet we knew that many could not attend for fear of their families, future employers, or fellow Christians finding out.

While anti-sodomy laws are now only a part of our history, it is important to remember that in the United States, we do not use a human rights framework in the way that Commonwealth countries do. Our rights are civil rights, individual freedoms. We have few protected classes in our law, and LGBTQI people are not a protected class. This means that although certain sex acts are no longer illegal, it is very difficult, almost impossible, to claim discrimination on the basis of LGBTQI status.

The *Religious Freedom Restoration Act of 1993* has been used in the past few years as a test or a final bulwark against LGBTQI equality. This has been playing out in marriage equality and has harrowing implications for LGTBQI people in

the United States. We have seen bakers, photographers, and city clerks refuse to provide services to same-sex couples based on their own religious beliefs. RFRA has also been tested by pharmacists and some health professionals who wish to withhold contraception and other tools of family planning. The civil rights movement in the United States fought for fairness in treatment in both the public and private sectors: restaurants, buses, stores, and schools. The collision of rights (in the U.S. framework) is between the business owner (or local government in the case of the school), employee, and the customer or citizen. Equality for LGBTQI people is being tested legally against RFRA today.

The Episcopal Church, whose voice—our voice—has been marginalized within the Anglican Communion for defying the tradition of the church, has, despite the regular disappointment of activists who believe we haven't gone far enough, proved to have been quite visionary, risk taking, and bold for insisting upon loving its own members and their families.

I could not be more proud to say that I am an Episcopalian. The church has taken risks for women, for queer people, and today for undocumented people and refugees. In the work of racial reconciliation, we have stood with our friends and siblings in Christ when other Christian churches have betrayed the same people. These decisions have cost us, but that cost is made up for by what we have gained. We are sloughing off what we thought was comfort but were actually shackles. We are free to stretch and learn and accept our own children. Imagine that. We are free to grow and lead as people who are not afraid of science, of progress, or of the contemporary world. And we find that people are drawn to us as they seek meaning in their own lives, and find us to be a church to which they can bring their full selves.

Rev. Winnie Varghese is the Priest and Director of Justice and Reconciliation at Trinity Church Wall Street. As an intern in the Episcopal Service Corps (1994–1996), she worked with the Mental Health Association of Los Angeles as an outreach worker to people who were homeless and living with severe mental illness. She is a blogger for The Huffington Post*, author of* Church Meets World, *editor of* What We Shall Become, *and author of numerous articles and chapters on social justice in the church.*

Mixed Forces for the 1969 Canadian Decriminalization of Homosexuality

Bishop Terry M. Brown

On December 19, 1968, the new Liberal government of Pierre Trudeau introduced into the House of Commons the *Criminal Law Amendment Act,* Bill C-150, in which section 149A exempted married couples and consenting adults (whatever their sexual orientation) acting in private from charges of buggery and gross indecency. Significantly, this was an omnibus bill that included other changes to the *Criminal Code* in areas of abortion, weapons, parole, and impaired driving. Trudeau, as Justice Minister in the previous Liberal government, had famously declared, "The state has no business in the bedrooms of the nation." In committee discussion leading up to debate, the new Minister of Justice, John Turner, explained that the rationale of section 149A was to separate matters of personal morality from criminal law. The opposition attempted to split the omnibus bill so that they could vote separately against section 149A but the ploy failed. Bill C-150 passed its third reading in the House of Commons on May 14, 1969, by a vote of 149–55 after a long and sometimes acrimonious debate. It was then ratified by the Senate and on August 26, 1969, sex between two persons of the same sex over the age of 21 done in private in Canada was no longer a criminal act.

Two caveats should be noted. First, many of the arguments put forward in favour of decriminalization at the time would not be acceptable today. The medical model of homosexuality was still dominant and many argued that consenting gay adults needed to be removed from potential criminal prosecution so that they could undergo some form of psychiatric care or cure. That view was also widely prevalent in the churches although other views were beginning to emerge; the 1969 decriminalization made way for gay advocacy groups, publications, and organizations—for example, on university campuses—to develop without fear of criminal prosecution.

The second caveat is that the 1969 decriminalization legislation was just the beginning. In January 1971, the University of Toronto Homophile Association launched a campaign to change the *Immigration Act,* which prohibited the immigration of homosexual persons to Canada, in view of the 1969 changes to the *Criminal Code.*[1] Laws and practices around gays and the military, security, and other government employment still stood. There was also the issue of sexual activity in places that were not strictly private—out of doors, clubs, bathhouses, etc.—as well as the unequal age of consent (18 for heterosexual relations, 21 for homosexual ones). Nor did the revised legislation necessarily change the hearts and minds of opponents of gay sex, whether police, prosecutors, politicians,

(many) church leaders, and much of the general population. Fear, arrest, and ostracization continued in many contexts.

Kimmel and Robinson, in a 2001 article in the *Canadian Journal of Law and Society,* identify many factors which made the 1969 decriminalization possible. They note "liberalized social attitudes, gay activism, and practical law enforcement problems" as significant but highlight two other areas: ongoing *Criminal Code* reform from the 1940s and the "re-conceptualization of homosexuality from a legal-criminal paradigm to a medical-scientific one".[2] However, today we would generally regard the latter as simply wrong, rejecting the notion of a "cure" for homosexual orientation or advocacy of "conversion therapy," in favour of a positive view of gay sexuality as a grace-filled gift of God. Thanks in part to decriminalization and the freedom it provided, same-sex intimacy is now viewed as something to be affirmed rather than criminalized or pathologized.

However, Kimmel and Robinson's first point—the inconsistency, ambiguity, and ultimate injustice of anti-sodomy, anti-buggery, and gross indecency laws inherited from Britain in the colonial era—is still very much to the point. Canadian *Criminal Code* reformers consistently struggled with the meaning of these terms as the laws were notoriously unclear; they could be applied to the smallest offence while ignoring the greatest. In this reform process, they were encouraged by the passage of the *Sexual Offences Act* by the British Parliament in July 1967, which generally followed the recommendations of the 1957 Wolfenden report. Canada's *Globe and Mail* newspaper endorsed the new British legislation as "sensible and just, as well as overdue," and urged more debate on the issue in Canada.[3] A liberal media presence was significant in moving the legislation along in Canada.

However not all of Canada's repressive legislation had colonial roots. Canada made a further addition to the *Criminal Code* in 1948 due to Cold War concerns about "sexual psychopaths," authorizing indefinite preventative detention (that is, potential life imprisonment) for those "who by a course of misconduct in sexual matters [have] evidenced a lack of power to control [their] sexual impulses and who as a result [are] likely to attack or otherwise inflict injury, loss, pain, or other evil on any person."[4] In 1953, the federal government further widened its definition of "criminal sexual psychopaths" to include those engaging in buggery and gross indecency.[5]

Kimmel and Robinson point out that the case of Everett George Klippert, a mechanic in the Northwest Territories who in 1965 was designated a dangerous sexual offender and placed in indefinite detention, brought the injustice of this legislation to the public attention. Klippert had been sentenced to three years in prison after pleading guilty to four counts of gross indecency, having admitted to consensual sex with four men. This was his second conviction and he had previously served a three-year prison sentence for the same offence. Klippert appealed

his sentence of virtual life imprisonment all the way to the Supreme Court where he lost by a three to two decision. The dissents were eloquent in pointing out the injustice of a law that would potentially sentence any Canadian adult engaging in same-sex intimacy to life imprisonment. Klippert was released from prison in 1971 after the 1969 *Criminal Code* reforms.[6] He died in 1996 and the present Prime Minister of Canada, Justin Trudeau, Pierre Trudeau's son, has indicated his intention of giving Klippert a posthumous pardon.[7] The Klippert case made it clear to the public how unfair and arbitrary the *Criminal Code* was and why it needed to be revised; it contributed to popular support for the 1969 *Criminal Code* revision.

As one of the themes of this conference is the role of the churches in the decriminalization of homosexuality, it should be noted that there was some advocacy on this issue by Canadian Christians, but not a lot. The *Globe and Mail* of June 2, 1965, announced the formation of the Canadian Council on Religion and the Homosexual (CCRH) by a small group of Anglican Diocese of Ottawa clergy and laity. Their secretary, Garrfield D. Nichol, an Anglican civil servant, explained that the purpose of the group was to enhance communication between the homosexual community and the church and to enlighten the public about the problems of the former. Nichol noted that "one of the main beliefs of the council is that any sexual act committed in private by consenting adults is not the concern of the law." Membership was open to anyone over the age of 21 regardless of sexual orientation. The Ottawa location was significant and Nichol noted that the meetings drew some curious heterosexual members of Parliament but also that "he knows of six homosexual members of Parliament", who were presumably too frightened to attend.[8] The antiquated and objectifying language of the article is simply that of the times, when no other language was available and fear was still the norm.

The *Globe and Mail* article drew the interest of the Rev'd Canon M. P. Wilkinson, General Secretary of the Department of Christian Social Service in the national office of the Anglican Church of Canada in Toronto, who on August 16, 1965, wrote the Chair of CCHR, the Rev'd Philip Rowswell, assistant priest at St. Martin's, Ottawa, for more information. In his response two days later, Rowswell explained, "CCRH was organized in May after a series of meetings held during the winter between a few members of the Clergy (mostly Anglican) with a small group of the homophile community in Ottawa." He noted that there was no official liaison with the Diocese but that the bishop of Ottawa knew of CCRH's activities "and is pleased that contact has been established between the Church and this group in society." Rowswell noted that their membership stood at a little under 20 and included four Anglican priests, one Roman Catholic priest and one United Church minister. Rowswell also noted that there had been much

interest in the new organization and that they had received requests for more information from across the country.[9]

Wilkinson requested further information on CCRH for the Social Service Council's informal newsletter sent out to dioceses and parishes, *Over to You*. On December 1, 1965, Rowswell sent its editor, Norah Lea, a copy of the CCRH's constitution, bylaws, brief to the Ontario Select Committee on Youth, and the program outline for CCRH's "Gab'n Java" (Talk and Coffee) sessions, which were confidential conversations with the gay community in informal settings. He noted that CCRH now had 20 open members and 20 secret members, the latter too afraid to be publicly associated with the group.[10]

Lea produced a condensed account of CCRH in the January 1966 issue of *Over to You.* Quoting the CCRH documents Rowswell had provided to her, Lea noted that its objectives could be summarized as "to continue a developing dialogue between the Church and homosexuals, aimed at a deeper understanding of problems faced by this group in society; building a greater body of knowledge and understanding of human sexual relationships; to support educational projects on homosexuality; to act as a referral agency; to co-operate with professional people in mental health and counselling fields in relation to the subject of sexuality; to provide opportunity for self-understanding for homosexuals through coffee club discussion sessions."[11] It should be noted that at the time, CCRH seemed to be moving from a medical-pathological view of gay sexuality to one that is more positive and affirming. CCRH included gay Ottawa civil servants, advocated Wolfenden-like reforms and remained active until 1967.[12]

Indeed, it appears that the passage of the 1969 amendment to the Canadian *Criminal Code* decriminalizing homosexuality was not a terribly controversial issue among Canadian Anglicans. Canadian newspapers carried stories of the Archbishop of Canterbury, Michael Ramsey, voting in favour of decriminalization in the House of Lords. A survey of all eleven 1969 issues of the Anglican Church of Canada national newspaper, the *Canadian Churchman*, shows no discussion or even reporting of the matter. Only one column from Ottawa in the July–August issue indirectly addresses the matter, giving the Prime Minister a positive score for his first year in office.[13] The pressing concerns for Canadian Anglicans at the time were the proposed union with the United Church of Canada and the release of the Hendry report on church relations with First Nations peoples, both of which produced acrimonious debate. The ethical political issues the Anglican Church of Canada was interested in were abolition of the death penalty and the distribution of birth control information and materials; those issues produced official church resolutions. Decriminalization of homosexuality was apparently a non-issue, thanks to legislative developments taking place in England, a liberal press, egregious cases of injustice needing correction, the work of

secular and church advocacy groups, the liberal ethos of the sixties, and Trudeau mania. However, after decriminalization in 1969, many problems would continue and the church would also face many controversies around its gay and lesbian clergy and laity, the blessing of gay and lesbian unions, and the existence of gay and lesbian bishops. As a rule, the Canadian government has moved much more quickly on these issues than the church, though there have always been strong church advocates. But that is another story.

The Canadian story encourages communication and advocacy that is shared and coordinated among all sectors: legal, political, judiciary, law enforcement, medical, psychological, church, media, gay advocacy, and the general population as the best way forward in the global struggle for the decriminalization of homosexuality. No one sector carries the day by itself. But if enough join together, decriminalization becomes a commonsensical and easily accepted solution to a great deal of suffering and fear.

Bishop Terry Brown is the retired Bishop of Malaita, in the Anglican Church of Melanesia. Currently he is Bishop-Rector of Church of the Ascension in Hamilton, Ontario, and Adjunct Lecturer in Theology of Mission at Trinity College in Toronto. He is the editor of Other Voices, Other Worlds: The Global Church Speaks Out on Homosexuality *(2006), a collection of essays from around the Anglican Communion reflecting positively on non-binary sexuality.*

[1] Letter from a member of the University of Toronto Homophile Association to Anne M. Davidson, Social Action Unit, Anglican Church of Canada, January 13, 1971, enclosing a letter to the Minister of Manpower and Immigration, Hon. Otto Lang, copied to the Minister of Justice, the Hon. John Turner, advocating the change to the Immigration Act. Homosexuality, 1965-1972 file, Social Action Ministries records in the Program fonds, GS76-01, Box 2. Anglican Church of Canada/General Synod Archives (ACC/GSA).

[2] D. Kimmel and D. Robinson, "Sex, Crime, Pathology, Homosexuality and Criminal Code Reform in Canada, 1949-1969," *Canadian Journal of Law and Society* (April 2001): p. 148.

[3] "Homosexuality and the Law," *The Globe and Mail,* July 6, 1967. Quoted in Kimmel and Robinson, p. 155.

[4] Quoted in Kimmel and Robinson, p. 152.

[5] Kimmel and Robinson, p. 152.

[6] Kimmel and Robinson, pp. 153–154.

[7] J. Ibbitson, "Trudeau to urge pardon for man deemed a dangerous sex offender for being gay in 1960s," *The Globe and Mail,* February 27, 2016.

[8] "Church Council Aims to Aid Homosexuals," *The Globe and Mail,* June 2, 1965, p. 9. Kimmel and Robinson discuss CCHR and other church groups on page 154 of their article.

[9] Homosexuality, 1965-1972 file. ACC/GSA.

[10] Homosexuality, 1965-1972 file. ACC/GSA. The CCRH official documents are not included in the archival file. There are further archival records of the CCRH, including official publications, in the Anglican Diocese of Ottawa archives but I have not had the chance to consult them.

[11] "Ottawa," *Over to You,* January 1966, p. 6. A complete run of *Over to You* is available at the General Synod Archives, Toronto.

[12] T. Warner, *Never Going Back: A History of Queer Activism in Canada* (Toronto: University of Toronto Press, 2002): p. 45.

[13] M. Western, "Trudeau's First Year Reviewed," *Canadian Churchman* (July-August 1969): p. 6.

The Anglican Church since Decriminalization

Bishop Kevin Robertson

My name is Kevin Robertson; I'm bishop suffragan in the Anglican Diocese of Toronto within the Anglican Church of Canada. I was elected bishop just over a year ago on September 17th, 2016, and consecrated on January 7th, 2017, along with two other colleagues. The way our diocese works, we have a diocesan bishop and four other bishops suffragan. It's the largest diocese in the Anglican Church of Canada, so we have five bishops—four area bishops who are each responsible for a particular geographical region of the diocese, and the diocesan bishop who oversees working for the entire diocese.

My area is called York-Scarborough, which includes downtown Toronto, the north end of the city and the east end of the city—including Scarborough. And we have lots and lots of Jamaicans and Barbadians in Toronto; as you know, Toronto is a very multicultural place. So, it's my privilege, Sunday by Sunday, as I move around to different parishes in my area, to see people from this place and from many other places in the Caribbean. They really enrich the life of the church in our diocese. And in some cases some of those parishes would not exist without the faith invested by the Anglicans.

We moved things around on the agenda a little bit just so that I can follow Bishop Terry. He provided information about the early days, and I'd like to say a few words in the limited time that I have about what's been happening in the life of the Anglican Church of Canada, and in Canadian society, since decriminalization. And, Winnie, I was interested to hear what you were saying about how the Episcopal Church often felt like it was leading the way in the United States. It was the voice of advocacy and prophecy as secular society was kind of doing its own thing and didn't actually come to a place of decriminalization until just over a decade ago.

I would generally say that the experience in Canada and with the Anglican Church of Canada has been the opposite. We are approaching almost 50 years since decriminalization in Canada. Winnie and I are about the same age, so I can say I was not even born when decriminalization took place in Canada. So I certainly don't have much to say to you today about those days; I wasn't even around.

I think I do have something to say about what has happened in the intervening years—about how, even after decriminalization with secular Canadian society and the churches in Canada, in particular the Anglican church of Canada, have made strides forward and understood themselves in relationship to one another as working with each other. Sometimes the church has been ahead; sometimes

society has been ahead.

One of the things that happened after decriminalization, about a decade later in 1982, is that Canada patriated its constitution and Her Majesty Queen Elizabeth II came to Ottawa and we owned our own constitution for the first time since the *British North America Act* from more than a century before. And in section 15 of the constitution, it says this:

> *Every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law without discrimination. And—in particular—without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.*

Section 15 was written so as to protect against discrimination generally, with the enumerated grounds of prohibited discrimination—race, sex, that kind of thing—being only examples of that. And in a landmark ruling in 1995 called *Egan v. Canada,* the Supreme Court of Canada recognized that sexual orientation was implicitly included in the section—in section 15—as an analogous ground, and is therefore a prohibited ground of discrimination.

So this further solidified the claims that many people were making around decriminalization, that under the constitution of Canada, you cannot discriminate based on sexual orientation.

Interestingly, the issues of transsexuality and HIV/AIDS were later also incorporated in some of those rulings. So that was a significant moment for Canadian society. Then came, as most of you know, the movement towards the legalization of same-sex marriage in Canada, which took place just over a decade ago in 2005.

This was in response to various provinces and territories in Canada making their own way forward. And then in 2005, it became law across Canada.

Let me say a word about where the church has been—the Anglican church of Canada, in particular—about that. As I said a moment ago, I think the church has often been behind secular society, responding to the needs and voices of people across the country.

In 1979, in a decision from the National House of Bishops—that's our house of bishops in Canada—a statement was made by the bishops that homosexuals may be ordained ministers, but must abstain from sex.

Homosexual unions were still not permitted in the church, nor was there a change to the national marriage canon, which is Canon 21. That was not changed in order to change the definition of marriage, or to allow for same-sex marriages.

The National House of Bishops also did not change the guidelines that existed in the 30 dioceses across the country, which said that clergy who were not married were expected to be celibate.

In the years that followed, those guidelines and understandings were tested at various times. In 1986, two lesbian deacons in the diocese of Toronto—in my diocese—came to the archbishop and let him know that they were married —not civilly, but they had married sort of underground. And they were expecting a child together. The archbishop "inhibited" those two women—meaning he took away their licenses to practice as deacons—and made a press statement about that. And then about six years later, a priest in our diocese, again in Toronto, was effectively fired because the archbishop—a new archbishop, Richard Finley—had found that he was in a same-sex relationship and Archbishop Finley said he either needed to give up his relationship or give up his cure.

And that led to something called a bishop's court, an ecclesiastical court that had not been convened in the diocese of Toronto for decades and decades, and it ended in the priest losing his position. Interestingly, we now look back on that 25 years later and in the case of those two lesbian deacons, one has been ordained a priest just in the past couple of years and the other is still a deacon in good standing. The priest, James Ferry, who was effectively fired in 1992, has seen his orders restored and is now functioning in a parish in the diocese of Toronto.

It's interesting that in a fairly short period of time those clergy are back in good standing in the diocese.

I want to say a quick word in the few minutes I have left about a vote that took place in General Synod at the Anglican Church of Canada a year and a half ago. I spoke about that marriage canon a few moments ago that was not changed in 1979 when the National House of Bishops made their statement. A motion came to General Synod to change Cannon 21 to permit, in the Anglican Church of Canada, the marriage of two people of the same sex.

There was lots of controversy in the days and weeks leading up to that. The motion required two thirds in the House of Laity, the House of Clergy and House of Bishops. After a miscount, we discovered that it had indeed passed. Just by one vote in the House of Clergy, but more substantially in the House of Bishops and the House of Laity.

There is a second reading of that motion, which will come to our next General Synod in 2019. Again, that motion will require two thirds of the votes in each of the three houses in order to pass. After that, dioceses and diocesan bishops may allow and encourage same-sex marriages in the dioceses.

Interestingly, some diocesan bishops went ahead with this even after the 2016 vote and that has been the source of some difficulty and controversy in our church to this day. There are about five or six diocesan bishops who have proceeded in limited circumstances, including our own bishop, the bishop of Toronto, and so we are actually celebrating same-sex marriages in our diocese right now, though it's in contravention of the National Church of Canada Canon 21. Lots of devel-

opments still to come between now and 2019. So please keep us in your prayers.

Finally, my election as a bishop in the Anglican Church of Canada, just a couple of months after General Synod, was not without some controversy. I am an openly gay and partnered man, we have two children, and at various stages along the way, clergy and lay people rose at Synod to object to my name being on the ballot and then wrote to the other Canadian bishops and ultimately to the archbishop of Canterbury to ask him to intervene so that I wouldn't be consecrated last January. That obviously didn't happen because I'm standing here wearing a purple shirt.

But it's a reflection, I think, of the many challenges that our church faces in moving forward. I would say that almost 50 years after decriminalization in Canadian society, we are making it work. And this wonderful dance between not only churches but other faith communities and the government and society. We are making it work. I hope that's a word of encouragement for all of us who are here today.

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Military Chaplaincy in the Canadian Armed Forces

Rev. Tom Decker

The 1973 Sydney Pollack movie, *The Way We Were,* starring Barbra Streisand and Robert Redford and considered to be one of the best romantic movies to date, offers a neat analogy for how the relationship between military chaplains and their secular employer, the Canadian Armed Forces, is perceived to have evolved in recent times. The movie chronicles the initial attraction between two people whose differences are immense, the ups and downs in their relationship, and their drifting apart as one adapts more easily to changing circumstances while the other stands firm on principles and convictions, which makes compromise next to impossible. Eventually, disillusioned by the constant fighting, they part ways. What is left for them to share is a profound sense of loss and the bittersweet memory of the way they once were.

One might argue that Canada and military chaplains in the Canadian Armed Forces share a similar relationship dynamic. At first they were inseparable. Military chaplains accompanied both the British and the French naval expeditions. They were the first to bring Christianity to what was later to become Canada. Following the victory of the British in the Battle of the Plains of Abraham (1759), which secured British rule in what was to become Canada, for a few years (1796–1802) their union was one that excluded all others. "Chaplains serving with the British military forces in Canada all had to be members of the Church of England in order to be enrolled as full time garrison or brigade chaplains."[1]

For the next 100-plus years, Canadian military chaplaincy was open to other Christian denominations, including Roman Catholics, while the relationship between the chaplains and first the Dominion then the young nation remained a very close one. In the military there were mandatory church parades and in turn Canada's iconic military chaplain of the First World War, Frederick G. Scott, "had unwavering faith in the sanctity of the British Empire and its Imperial vision… It was a time in which the crosses on the Union Jack were regarded with absolute certainty as symbols not only of a British, but a world-wide Christian empire in which military conquest in the Queen's name was equal to spiritual conquest in Christ's name."[2]

Drifting Apart—Canada Evolves to be a Multicultural and Pluralist Society

In 1971, Prime Minister Pierre Elliott Trudeau declared in the House of Commons that bilingualism and multiculturalism would henceforth underpin Canadian policy-making. Thus, Canada became the first country in the world to adopt multiculturalism as part of its identity.

In 1982, Canada repatriated its constitution and enacted the *Canadian Charter of Rights and Freedoms.* Section 27 of the Charter recognizes Canada's policy of multiculturalism and elevates it to the constitutional level. This section reads: "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians." Multiculturalism, according to the Charter, must not be viewed as something static or fully defined at the time the Charter was enacted, but as something that is constantly evolving and adaptive to the needs of a changing Canadian society.

In 1988, Canada enacted the federal *Multiculturalism Act,* which states in section 3 (1) that it is the policy of the Government of Canada to (a) recognize and promote the understanding that multiculturalism is a fundamental characteristic of Canadian heritage and identity and that it provides an invaluable resource in the shaping of Canada's future and (b) promote the full and equitable participation of individuals and communities of all origins in the continuing evolution and shaping of all aspects of Canadian society and assist them in the elimination of any barrier to that participation.

The Canadian Armed Forces are mandated to mirror Canadian society both in its composition and policy. The 2017 Department of National Defense policy entitled *Strong, Secure, Engaged* makes this patently clear when it commits every aspect of military life to the realization to the fullest degree possible of multiculturalism, diversity and inclusion:

> *The Canadian Armed Forces is committed to demonstrating leadership in reflecting Canadian ideals of diversity, respect and inclusion, including striving for gender equality and building a workforce that leverages the diversity of Canadian society. Canada's unique, diverse and multicultural population is one of its greatest strengths. While positive steps have been made towards greater diversity, inclusion and gender equality, we can do much more to reflect and harness the strength and diversity of the people we serve, in both military and civilian ranks.*
>
> *We are fully committed to implementing our comprehensive Diversity Strategy and Action Plan, which will promote an institution-wide culture that embraces diversity and inclusion. This includes reinforcing diversity in the identity of the Canadian Armed Forces and our doctrine, modernizing career management and all policies to support diversity and inclusion, and conducting targeted research to better understand diversity within the Department of National Defense.*
>
> *Embracing diversity will enhance military operational effectiveness by drawing on all of the strengths of Canada's population.*[3]

There can be no doubt: What makes Canada the country it is, is our unwavering commitment to multiculturalism, diversity, and inclusion. The Canadian Armed Forces are not exempt but are in fact held to a higher standard in terms of realizing these policy goals.

If multiculturalism, diversity, and inclusion are considered hallmarks of Canadian policy, it follows that the State cannot be partial to one group and not the other, to one religion and not the other nor, indeed, no religion whatsoever. This places the State in a markedly different position vis-à-vis its companion of old, the Christian church (in its various denominations). A relationship that for much of its history had displayed elements of if not exclusivity then, at least, preferential treatment, was opened up to welcome all faiths as well as no faith alike. The doctrine of clear separation between church and state, which has been a pillar of modern political philosophy, was elevated from the status of being an ideal we espouse to a practice we live. Being employed by the State to render a distinctly religious service, have military chaplains thus been rendered one of the last vestiges of a bygone era?

Headed for Divorce?

Jean L. Cohen offers a compelling description of the role religion and its adherents have played in the socio-political landscape in recent times by stating that ours is

> *an epoch in which demands for religious freedom, state accommodation, and recognition of religion, on the one side, and for freedom from religion, from control by religious authorities, and from state enforcement of religious norms and privileges, on the other, are proliferating and politicized in myriad ways. Indeed, polarization between political religionists and militant secularists on both sides of the Atlantic is on the rise. Settled constitutional arrangements are becoming destabilized in regions that were the seedbed and locus classicus of political secularism and liberal constitutional democracy, and the assumption that these must or even can go together is now being questioned. Political religionists and many post-secularists reject what they take to be characteristic of political secularism—the privatization of religion—and regard the principles of nonestablishment and separation of church and state with suspicion. Secularists are equally suspicious of escalating demands for accommodation, 'multicultural jurisdiction,' or legal pluralism for religious-status groups involving immunity from the state's secular legal ordering and recognition of the right of religious groups to*

> *autonomously make their own laws and to enforce them in key domains (family law and education) with or without state help. Each side enlists the discourses of pluralism, human rights, and fundamental constitutional principles on its behalf.*[4]

In Canada, the two camps have been butting heads over a number of issues including but not limited to legal recognition of same-sex relationships, public funding for private denominational schools, provincial sex education curricula, the question of whether religious organizations must operate in accordance with public policy in matters of housing, health care, and employment, whether public prayer can act as an instrument of discrimination, and myriad religious accommodation issues ranging from the placement/substitution of religious insignia on government-issued uniforms to the recent very hotly debated issue of whether religious garments that conceal a person's face may be worn. Many of these hotly debated issues in one way or another are perceived as limitations or violations of a person's rights under the *Canadian Charter of Rights and Freedoms.* Competing rights claims frequently revolve around issues of freedom of conscience and religion on the one hand and freedom of thought, belief, opinion, and expression, the right to life, liberty, and security of the person, the right to privacy and all equality rights on the other. All these cases have one thing in common: one person's/group's exercise of protected freedoms is experienced by another person or group as directly causing complete or partial loss of enjoyment of one or more of their constitutionally protected rights and freedoms.

Because these fundamental rights and freedoms are very dear to most of us and affect us at the very core of our identity—not to mention the fact that since World War II most western societies recognize them as *inalienable rights,* i.e., they are not granted but emerge from our shared humanity and the inherent dignity of each and every person and cannot be taken away from us[5]—when we feel that these fundamental rights and freedoms are curtailed, infringed upon, or abrogated, the remedy provided for by most modern democracies is in the form of a claim brought against the state or another party before Human Rights Institutions created specifically for the purpose of mediating or adjudicating such matters or before the regular courts. These matters are usually complex because although some of these fundamental rights and freedoms are inalienable, they are not absolute. The enjoyment of my fundamental rights and freedoms finds its logical limitation as soon as the exercise of my fundamental right causes another person harm[6] or diminishes the enjoyment of any of their fundamental rights and freedoms. More often than not, we are faced with a situation of competing rights, all of which exist for the protection or in furtherance of a specific value or good and in so doing may conflict with one another. If resolution cannot be obtained

from a lower instance court, it is the task of the Supreme Court of Canada to definitively rule on the balance of competing rights. In finding this balance between competing rights, the Supreme Court itself is bound by section 1 of the *Canadian Charter of Rights and Freedoms,* which states:

> *The* Canadian Charter of Rights and Freedoms *guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*[7]

This section ensures that the Charter is interpreted as liberally as is possible and that it remains a living document adaptable to current and future needs of a continually evolving Canadian society built on the principles of multiculturalism, pluralism, and diversity. The burden of proof regarding the reasonableness of a rights limitation rests squarely with the party (usually the state itself or an institution of the state) seeking to retain an existing limitation or impose a new one. The instrument at the Supreme Court's disposal to determine what reasonable limits imposed on rights and freedoms can be demonstrably justified in a free and democratic society is known as the Oakes test, which Ian Greene succinctly describes as follows:

> *The Oakes test has two key components. First, the objective of the government in limiting a right must be of sufficient importance to society to justify encroachment on a right. Second, the limit must be reasonable and demonstrably justified in terms of not being out of proportion to the government objective, and must therefore satisfy three criteria: (a) it must be rationally connected to the government objective, and not arbitrary or capricious; (b) it should impair the right as little as is necessary to achieve the government objective; and (c) even if the previous points are satisfied, the effects of the limit cannot be out of proportion to what is accomplished by the government objective—in other words, the cure cannot be allowed to be more harmful than the disease.*[8]

There is a body of Canadian jurisprudence pertaining to matters of religious accommodation and/or to matters where religion or religious practice has come in conflict with someone else's fundamental rights and freedoms. This body is sizeable enough to allow us to discern certain trends. Salient cases include *Hutterian Brethren of Wilson Colony, Jones, Multani, Regina v. Big M Drug Mart Ltd., Robertson and Rosetanni, Saguenay,* and *Saumur*.[9]

In all the above-mentioned cases, Justices were also wrestling with far more fundamental questions found at the core of the various presenting issues, i.e., what we understand freedom of religion to really mean and how we should define

the role of the secular, multicultural, pluralist state of the 21st century vis-à-vis religion and religious institutions.

Justice Gascon, who penned the *Saguenay* decision, first reminds us of the full meaning of freedom of religion. Whilst in popular discourse, freedom of religion is often understood as "the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination,"[10] Justice Gascon unequivocally states the logical corollary of the above, i.e., that "[t]he freedom not to believe, to manifest one's non-belief and to refuse to participate in religious observance is also protected… For the purposes of the protections afforded by the charters, the concepts of 'belief' and 'religion' encompass non-belief, atheism and agnosticism."[11] Freedom of religion therefore means on the one hand the freedom to do something, such as espousing a particular religious belief (the ascribing sense), and on the other it also and equally means freedom *from* religion, i.e., the freedom not to hold any religious belief (the privative sense).

Historically, the privative understanding of freedom of religion, i.e., freedom *from* state-imposed religion, came first. Most of us today would probably understand the notion of freedom of conscience and religion to be something that emerged as a result of the Enlightenment and therefore consider it a concept germane to societies of modernity and post-modernity. It may therefore surprise some that the first claim to respect freedom of conscience and religion was made more than fifteen centuries earlier in Carthage (North Africa) around 212 CE. In a stand-off with the Roman magistrate Scapula, Tertullian, Bishop of Carthage, coins the term freedom of religion (*libertate religionis,* Lat.) which he clearly understands to mean freedom *from* state-imposed religion, conceives it to be a human right and makes the following claim:

> *…it is a fundamental human right, a privilege of nature, that every man should worship according to his own convictions: one man's religion neither harms nor helps another man. It is assuredly no part of religion to compel religion—to which free-will and not force should lead us—the sacrificial victims even being required of a willing mind. You will render no real service to your gods by compelling us to sacrifice. For they can have no desire of offerings from the unwilling, unless they are animated by a spirit of contention, which is a thing altogether undivine.*[12]

After having sunk into oblivion for centuries, the concept reemerges in the wake of the Reformation, again first and foremost in its privative meaning. Justice Dickson in *Big M* unfolded the historical argument for the primacy of a privative understanding of freedom of religion and supported his argument with practical

reasoning. He noted how in post-Reformation Europe, both Roman Catholic and Protestant monarchs had attempted to impose their beliefs on all their subjects, not often with great success but always at the cost of many lives.[13] During the 17th century in England, people eventually realized that "belief itself was not amenable to compulsion."[14] Therefore, the position that the minority must conform to the traditions of the religious majority, either for the sake of convenience or to promote the truth (as the majority understood it to be) was no longer acceptable.

A logical consequence of an understanding of freedom of religion as primarily freedom from religion is that the state itself must not espouse any religion, but has in fact a duty of neutrality in this regard. In *Saguenay*, Justice Gascon traces the history of how the concept of the state's duty of neutrality developed in Western democratic traditions and in Canada in particular.[15] He then concludes that

> *the evolution of Canadian society has given rise to a concept of neutrality according to which the state must not interfere in religion and beliefs. The state must instead remain neutral in this regard. This neutrality requires that the state neither favour nor hinder any particular belief, and the same holds true for non-belief… It requires that the state abstain from taking any position and thus avoid adhering to a particular belief… By expressing no preference, the state ensures that it preserves a neutral public space that is free of discrimination and in which true freedom to believe or not to believe is enjoyed by everyone equally, given that everyone is valued equally.*[16]

In light of the above, there can be no doubt that the sociopolitical landscape has fundamentally changed from what it was (or at least is reputed to have been) a few decades ago. Gone are the days when the relationship bonds between church and state were strong and the state accorded the (Christian) church a position of privilege that other social institutions did not enjoy. Such privilege no longer exists; instead, the church, whilst having managed to remain an important institution of the dominant culture in Canada, is but one of many moral entrepreneurs and public opinion shapers. Once regarded a close confidant of the state, she now has to queue up like everybody else in order to be heard.

Similarly, the state should not impose narrow religious interpretations of morality on the lives and loves of consenting adults. Therefore, criminalizing same-sex intimacy ostensibly to protect religious views is untenable in a multicultural society.

Breaking New Ground—How Military Chaplaincy Keeps Adapting to Changing Social Realities

Needless to say that as the role of religion and the position of the church changed as a consequence of the state's duty of neutrality, the role and station of the military chaplain—a religious professional in the state's employ—has undergone equally profound changes. This loss of station is sometimes lamented,[17] but at the same time military chaplains have demonstrated extraordinary resilience and adaptability to a rapidly changing socio-political landscape and the tensions that go along with such change. Not only have military chaplains adapted, they have also carved out new territory for themselves whereby they have transitioned from being church leaders in a military environment to religious advisors and experts, for example, in the field of religious leader engagement. In fact, it is hardly an exaggeration to say that the role of military chaplaincy has broadened and deepened, and that for the most part the well-reasoned opinion and the expertise of the chaplain is valued, actively sought, and respected.

I am also convinced that the continued relevance of and respect for the chaplaincy stands in direct correlation to how well chaplains themselves embody the values of diversity in all its forms and expressions, how sincere they are in their desire to engage and continuously grow in a multifaith and multicultural engagement, and how relentless they are in their efforts to respect and uphold the dignity of every human being. Conversely, an obstinate refusal to embrace all that diversity has to offer, the mere appearance of exclusionary or discriminatory practices,[18] and quite possibly an over-inflated nostalgia about the way we were in the good ol' days will only hurt military chaplaincy and potentially cause its demise.

The Supreme Court in *Saguenay* made it patently clear that we are not a protected species. Justice Gascon did not mince words when he emphasized that the Supreme Court's election of a *strong* neutrality of the state vis-à-vis religion (meaning that the state must neither in fact nor appearance be taking part in a religion) as opposed to a *benevolent* neutrality for which the Court of Appeal, the lower instance court that found in favour of the City of Saguenay (the respondent), had advocated, was in good measure brought about by the obstinately defiant attitudes of Mr. Tremblay, the Mayor of Saguenay.[19] Justice Gascon writes:

> *I concede that the state's duty of neutrality does not require it to abstain from celebrating and preserving its religious heritage. But that cannot justify the state engaging in a discriminatory practice for religious purposes, which is what happened in the case of the City's prayer. The mayor's public declarations are revealing of the true function of the council's practice.*[20]

The lesson to be drawn is apparent: Defiantly opposing the state's policy of multiculturalism, diversity, and inclusion and displaying a lack of respect for the

state's duty of neutrality will only hurt military chaplaincy and do so in relatively short order.

From this vantage point, one may indeed come away with a sense of loss or even doom concerning the future of military chaplaincy in Canada. However, I consider this to be an unnecessarily negative and defeatist assessment of the station, and even more so, of the potential role military chaplaincy can play in the Canadian Armed Forces as well as in Canadian society at large.

When attending and speaking at a public event, recognizing every person present regardless of their faith background or lack thereof and making them feel welcome and appreciated as well as acknowledging that the land we call home today did at one time belong to someone else should not seem onerous or be misconstrued as a forced-upon apology for being Christian. I am reminded of the popular phrase, "When you're accustomed to privilege, equality feels like oppression."

It can be viewed differently. Once multiculturalism, diversity, and inclusion are wholeheartedly accepted and celebrated as that which makes Canada and its people strong, rich, and beautiful, such a requirement can hardly be viewed as a chore, but instead is elevated and becomes a prestigious task. One might even go so far as to say that the requirement of non-discrimination and inclusion has returned military chaplains to a place of honour and entrusted them with responsibility to ensure that ALL are recognized as equal and of intrinsic and inalienable value in the eyes of the modern state. This is an honour and a privilege.

I dare say the future for military chaplaincy is a bright one. To be sure, chaplains will be required to keep adjusting to ever more quickly changing social realities. But who would be better suited for the task than military chaplains? In one way or another military chaplains have lived up to the ideal of promoting diversity and inclusion for years, and they have done so authentically and with integrity. They have even made it their motto: *We care for all, we minister to our own, and we facilitate the worship of others.*

In an increasingly secular environment, military chaplaincy has the potential of serving as a role model for people of faith negotiating the multicultural, multifaith, pluralist social landscapes in which we live today. In previous eras, the people came to the church. Today, the church has to go to the people if she wants to survive. In military chaplaincy, the church has always gone to the people, and better yet, lived with the people through all their joys and tribulations. Might military chaplains have a bit of an edge when it comes to figuring out how to do church in the 21st century? Time will tell (and I am quite hopeful).

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1 Anglican Church of Canada, "History of Canadian Military Chaplaincy," www.anglican.ca/amo/ourhistory.

2 Hustak, A., Faith Under Fire: Frederick G. Scott, Canada's extraordinary chaplain of the Great War (Montreal, Vehicule Press, 2014)

3 Department of National Defense, *Strong, Secure, Engaged* (2017), p. 23.

4 Cohen, J.L., "Introduction," Religion, Secularism, and Constitutional Democracy, ed. Cohen, J.L./Laborde, C. (New York, Columbia University Press, 2016). Emphasis mine.

5 All modern democracies reserve the right to temporarily suspend or curtail (some) inalienable rights for cause and in accordance with very narrowly defined rules of due process.

6 This is known as John Stuart Mill's Harm Principle: "That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him, must be calculated to produce evil to some one else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign." (*On Liberty,* pp. 10f.)

7 *Canadian Charter of Rights and Freedoms,* s. 1, Part I of the Constitution Act, 1982.

8 Greene, I., *The Charter of Rights and Freedoms: 30+ years of decisions that shape Canadian life* (Toronto: James Lorimer & Company Ltd., Publishers, 2014) p. 77.

9 Greene, *supra,* pp. 97-106, offers a succinct exploration of these cases minus Saguenay. The issue of public prayer has been addressed in *Freitag v Penetanguishene* (Town) [1999] CanLII 3786 (ON CA); *Allen v Renfrew (Corp of the County)* [2004] CanLII 13978 (ON SC). *Commission des droits de la personne et des droits de la jeunesse v Laval (Ville de)* [2006] QCTDP 17. The matter litigated in three instances thus ending up before the Supreme Court of Canada is *Simoneau v Tremblay* [2011] QCTDP 1; *Saguenay (Ville de) v Mouvement laïque québécois* [2013] QCCA 936; *Mouvement laïque québécois v Saguenay (City)* [2015] SCC 16. A detailed discussion of these cases can be found in Lefebvre, S., "The Prayer Case Saga in Canada: An 'Expert Insider' Perspective on Praying in the Political and Public Arenas," Berger, B.L./Moon, R., *Religion and the Exercise of Public Authority* (Oxford: Hart Publishing, 2016).

10 *Mouvement laïque québécois v Saguenay* (City) [2015] SCC 16, at para. 68 citing Justice Dickson J. in *Regina v. Big M Drug Mart Ltd. et al.,* 1 SCR 295 (1985).

11 Ibid., at para. 70.

12 Tertullian, *Ad Scapulam,* II (2). Tamen humani iuris et naturalis potestatis est unicuique quod putauerit colere; nec alii obest aut prodest alterius religio. Sed nec religionis est cogere religionem, quae sponte suscipi debeat, non ui, cum et hostiae ab animo libenti expostulentur. Ita etsi nos compuleritis ad sacrificandum, nihil praestabitis diis uestris: ab inuitis enim sacrificia non desiderabunt, nisi si contentiosi sunt; contensiosus autem Deus non est.

13 *R. v. Big M Drug Mart Ltd.* [1985] 1 SCR 295, at para. 118-123.

14 Ibid., at para. 120.

15 *Mouvement laïque québécois v Saguenay (City)* [2015] SCC 16, at para. 70. Richard Moon in "Freedom of Religion under the Charter of Rights: The Limits of State Neutrality," *UBC Law Review,* vol. 45:2 (2012), pp. 497-549, offers an excellent and highly nuanced exploration of state neutrality.

16 Ibid., at para. 72-74.

[17] For an in-depth assessment of how chaplains have dealt with the demands of pluralism in recent times, see Peterson, M.T., "The Reinvention of the Canadian Armed Forces Chaplaincy and the Limits of Religious Pluralism" (2015) 1729, pp. 136ff.

[18] Excluded from this statement are such instances where ecclesiastical authorities prohibit a chaplain from providing certain services (usually in the form of sacraments or rites) to a specific group of persons. A case in point would be the prohibition maintained by some Christian denominations concerning the solemnization of marriage between two persons of the same gender. In the secular realm, such discrimination and alienation has been unlawful in Canada since 2005. Being religious professionals employed by the state, chaplains may find themselves in a position where—on the one hand—their secular employer (the state) has a reasonable expectation that all persons in the state's employ abide by public policy and render all services in a non-discriminatory fashion, without bias or prejudice, and in accordance with the laws of the nation, and—on the other—their religious authority which may expressly forbid such inclusion. For a local pastor or parish priest, this may not pose a problem at all. The state has granted recognized religious organizations broad autonomy in all matters of faith and to a lesser degree in matters of social structuring. The local pastor can simply refuse to entertain the request for service, bid the enquirers a good day and send them on their merry (or possibly not so merry) way. Not so the military chaplain. If his or her ecclesiastical authority prohibits them from providing a service, the military chaplain cannot simply dismiss the person seeking service, but has to provide an alternative, i.e., a religious professional from another denomination or faith that does not impose restrictions concerning the eligibility of persons seeking service.

[19] *Mouvement laïque québécois v Saguenay* (City) [2015] SCC 16, at paras. 147-53.

[20] Ibid., at para. 116.

A Church of England Take on Buggery Law

Rt. Rev. Dr. Alan Wilson

Buggery was criminalized in England in 1533. The date is no accident. The law was a legal fix to enable Henry VIII to pressurize and, if necessary, hang monks whilst seizing their assets, a footnote to the history of the English Reformation.

Before 1533, sodomy, to use the biblically illiterate terminology of the Middle Ages, was a matter for canon law, not criminal law. It was dealt with, alongside adultery and marital disputes, as a minor offence by Church courts. Henry's daughter Mary put it back in the hands of the Church when she was crowned twenty years later. By 1563, the pendulum had swung back, and Henry's Protestant daughter, Elizabeth, re-enacted her father's law. But buggery was historically seen in England as a sin, a matter for the Church, not a crime.

The 1533 legislation was a key part of Henry's plan to seize and suppress the monasteries. Thomas Cromwell devised a bill

> *to punish the detestable and abominable Vice of Buggerie committed with Mankind or Beast…the offenders being hereof convicted by verdict confession or outlawry shall suffer such pains of death and losses and penalties of their goods chattels debts lands tenements and hereditaments as felons do according to the Common Laws of this Realm. And no person offending in any such offence shall be admitted to his Clergy.*

Henry VIII was, notoriously, a prodigious family man, but this was not his rationale about buggery. He did not believe homosexuality was particularly sinful—indeed he lived 300 years before the homosexuality as we know it was first conceptualized. As part of his campaign against the historic privileges of the Church, his new buggery law enabled him to try monks and other ecclesiastics in criminal courts.

He suspected, and commissioners' inquiries revealed, that all kinds of vice went on in single-sex monasteries. Monks who had previously been dealt with in a Church court, if at all, could now be convicted of a new hanging offence by confession, by verdict of a state court (including the high court of parliament), or by failing to show up before a judge. They could be executed and any private assets taken by the Crown. Commissioners were sent round to collect gossip and allegations about monks all over the country, and by the mid-1530s many were surrendering their houses and their assets to the King.

This legislation was a political tool, and death sentences were rarely carried out. Nicholas Udall, headmaster of Eton, was the first cleric to be convicted under

the new law, but he wasn't executed and instead ended his days a few years later as headmaster of Westminster School. Over the coming centuries a few people were occasionally hanged for buggery, especially those who fell afoul of powerful enemies.

Thus John Atherton, Bishop of Waterford, was hanged in Dublin in 1641. Rich and influential Protestant landowners were enraged by his attempts to protect and consolidate Church lands beyond their reach. The buggery law was used for politics and property, not sexual morality. Executions for buggery were unusual but occasional in England right up to 1835 when James Pratt and John Smith were hanged in London.

In 1828, a new *Offences against the Person Act* passed into English law, and was later reformed in 1861. Buggery, its definition slightly modified, would now carry a 10-year prison sentence.

The mid-nineteenth century saw much anxiety in England about its presence in India, especially during the buildup to and aftermath of what Victorian Imperialists called the Indian Mutiny. Lord Macaulay served as chair of the Indian law commission from 1834. The aim of the commission was to simplify and then impose English Law on the many and varied cultures of India in order to consolidate British rule across the subcontinent. For this purpose, Macaulay drafted what became section 377 of the *Indian Penal Code,* which imposed by the British in 1860. This dealt with "unnatural offences," providing that

> *Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine.*

This provision outlasted the British Empire in India. By 1898, all of the countries coloured in red on the map had similar provisions, originating from the colonial office in London. Such carnal intercourse laws became a distinctive feature of British imperialism in the high Victorian age.

Victorian morality reached its raging zenith in the mid-1880s. London, where some were dressing up their piano legs for modesty's sake, was also a place where, as one newspaper revealed in 1885, a child of 13 could be procured on the streets for £5. That year, Parliament passed a new *Criminal Law Amendment Act.* This supplemented the buggery law with a new offence of gross indecency to punish homosexual conduct that fell short of legal buggery. This was the law under which Oscar Wilde was imprisoned in 1895.

The church broadly drifted along with high Victorian moralism but after the First World War, some Anglican theologians began to argue that whilst homosexual behaviour was wrong, it was a time for Anglicans to take a fresh pastoral

approach to the people concerned. In 1932, the Anglo-Catholic theologian Alec Vidler wrote:

> *Because most adults people are heterosexual (i.e. attracted to people of the opposite sex to their own), homosexuality is popularly regarded as abnormal (which it is) but also as a discreditable, evil and pathological condition (which it is not). Popular judgement is grossly mistaken and unfair. The fact of homosexuality (which is no more discreditable when heterosexuality) must be taken into account and provided for in any ethic which is to meet the necessities of human life.*

In the early 1950s, Derrick Sherwin Bailey was Study Secretary of the Church of England Moral Welfare Council (CEMWC). He argued even more forcefully for a fresh pastoral approach. A confidential briefing was prepared for the CEMWC in 1954 and in 1956, he co-ordinated the background report on which V. A. Demant, Regius Professor of Moral and Pastoral Theology at Oxford, based his contribution to the Wolfenden commission that reported in September 1957.

Lawmakers are always cautious about hotly contested areas of social policy and it took another 10 years before sexual intimacy in private between males was partially decriminalized by the *Sexual Offences Act,* 1967. This was not blanket decriminalization, but a first decisive step towards it. The act only applied to England and Wales, not the entire United Kingdom or the Merchant Navy and Armed Forces, and only to men over the age of 21.

In 1980, the 1967 Act was extended to Scotland and then to Northern Ireland in 1982. The 2003 *Sexual Offences Act* equalized the age of consent. But homosexual intimacy was not fully decriminalized in the United Kingdom until 2017, when royal assent was given to the *Merchant Shipping Homosexual Conduct Act.*

Social attitudes in the U.K. have, naturally, changed drastically during the past 50 years. The vast majority of English people today see homosexuality as a variant within the range of normal sexual desire and behaviour. A smaller group would still see homosexuality as an illness or disability, but this view is waning. Once society stops treating gay people as a problem, gay people simply integrate in society with everyone else. Christian gay-straightening ministries have collapsed in failure since the 1990s. This cannot be surprising since the National Health Service itself applied various bogus gay-straightening therapies to thousands of LGBT people between 1947 and the late 1980s, and to no useful purpose or effect.

There is still a significant group in the U.K. population, recently estimated as 16% of Anglicans, 20% of Evangelical Christians, and about 12% of the general population, who see homosexuality as a sin. The number who believe it should

be a crime is now microscopic. Even U.K. anti-gay warriors who secretly think decriminalization in the U.K. was a mistake, only say so in Jamaica and pretend they didn't when they get home. They know perfectly well that there is absolutely no argument to recriminalize homosexual love in the U.K. today.

How might this analysis apply to the U.K. 60 years ago at the threshold of decriminalization?

There was no systematic survey in these terms at the time. But working on the basis of Wolfenden evidence, over half were in favour of decriminalization, but only very few were, in any sense, pro-gay. Twenty percent, perhaps, saw homosexuality as a morally neutral variant. More people, perhaps 30%, saw it as an illness to be treated by psychiatrists. An even larger number of people, including most Anglicans, believed homosexuality was a sin. And, 60 years ago, about a quarter seemed to believe that homosexuality should remain a crime.

So, very few of the people who passed the 1967 Act were in any sense pro-gay. Around 80% of them regarded homosexuality as wrong for one reason or another.

For many, it was a matter of irrational disgust. David Maxwell-Fyfe, Lord Kilmuir, was Lord Chancellor in 1965. He asked the House of Lords, "Are your lordships going to pass a bill that would make it lawful for two senior officers of police to go to bed together?"

Bishops led by the Archbishop of Canterbury, Dr. Michael Ramsey, took a more intelligent and pastoral approach. They voted for partial decriminalization. Although they regarded homosexuality as wrong, they thought the present law obsolete and unjust.

Roger Wilson, Bishop of Chichester, spoke in the same Lords debate in May 1965:

> *The law relating to private homosexual conduct between consenting adults does grave injustice to a large number of individuals. It is productive much misery. It produces a squalid underworld of suspicion and fear. It leads to blackmail. It leads often enough to the tragedy of suicide. Moreover, it is obstructs the very purposes which the law should make possible—namely, the pastoral care and treatment of the offender and the rescue with many would be offenders struggling, it may be, against a weakness which they have been born with, whose own resistance to the danger at present cannot receive the reinforcement of the counsel which they so desperately need. Indeed what we wish to bring to this problem is the possibility of an area of compassion and of spiritual resources, which are almost precluded under the present state of the law.*

There were two fundamental legal arguments for change in 1967. One was to do with the bad effects of the present law. Prohibition in the United States had been a high-minded attempt to enforce morality, but it ended up with Al Capone. Whatever good it accomplished was rubbed out by overwhelmingly more evil effects.

A second and more important argument was between two distinguished lawyers.

Patrick Devlin, the youngest high court judge of the 20th century, was a law lord from 1961. Devlin argued, from his Catholic perspective, that the purpose of law was to enforce morality on the population. Law should send up markers of approval and disapproval, whatever the human impact of attempting to do that.

He was opposed by H. L. A. Hart, Professor of Jurisprudence at Oxford University. In his book on the subject, *Law, Liberty, and Morality,* Hart argued that the purpose of the criminal law was not to enforce a moral code but simply to restrain any behaviour that was dangerous or harmful to others. Personal moral decisions should be made by individuals on the basis of their own moral judgement, and the law should stay out of those decisions where they caused no harm.

Even though the vast majority of U.K. lawmakers disapproved of homosexuality, by 1967 they had come to see that they had no business to police what went on in the bedroom as long as it caused no harm to anyone else.

In the years following the *Sexual Offences Act,* the Church of England produced various reports summarizing the ongoing moral debate in England, often recommending great caution but expanding pastoral accommodation.

A secret report produced in 1970 was followed by a public one in 1979, chaired by the Bishop of Gloucester. In 1989, the House of Bishops commissioned the Osborne report proposing an approach that could hold across all shades of Church opinion. This was suppressed out of episcopal cowardice about of a newly ascendant conservative faction in the General Synod, and only published in 2012. In 1991, a group commissioned by the House of Bishops produced *Issues in Human Sexuality,* which became the standard dogma to which all Church of England ordinands still have, theoretically, to sign up. Again this discussion paper took an extremely conservative line, whilst trying to reach out to gay people, especially if they were not ordained.

Issues in Human Sexuality was followed eight years later by *Some Issues in Human Sexuality: A Guide to the Debate* and a string of other reports and papers including the so-called Pilling report of 2013. The Church of England has still not come to a common mind on the rightness or wrongness of homosexuality. As many as 16% still believe it to be wrong, often vehemently.

The Pilling report attempted to initiate a listening process of charitable engagement between people on different sides. Without something like this, it's hard

to see how any progress can be made beyond deadlock, and a desire for intelligent mutual understanding, more than slogans, lies behind the present conference.

There has been much change and, through the past 50 years, gut feelings about homosexuality have often been something of the elephant in the room. What has driven change more than anything else has been the emergence of gay people from the ghetto. Once people who are gay are taken seriously rather than stigmatized and shamed, the basic Christian commandment to love takes over.

It is interesting to note that in 1957 the senior leadership of the church were, broadly speaking, ahead of most people in the pews. That position is now reversed, with much more acceptance among ordinary Anglicans but a senior leadership that is far more anxious, neurotic, and hidebound. Many overestimate the extent to which a post-Imperialist Church of England can, or indeed should, influence other provinces' discernments within their separate cultures. In some ways the most internally damaging effect of the way the Church of England has engaged with LGBT+ people in the past 60 years has been a phenomenon that was drawn to the church's attention in the 1989 Osborne report. A lifetime of trying to steer around difficulties rather than facing them has been wearying all round, and as minimal—if not non-existent—as Jesus's teaching on homosexuality is, his teaching on hypocrisy is clear:

> *The present methods may be perceived to lack clarity. From one side it may be suggested that there is not enough toughness in the opposing on the sexual contact. On the other it may be seen to be discriminating against homosexual persons.*
> *It runs the risk of inhibiting clergy and ordinands from being open to the bishop. Indeed, there is evidence to suggest that homosexuals very cautious about how much they feel able to share with their bishop. All of this can lead to deception, hypocrisy and concealment which are detrimental to spiritual growth and healthy adult relationships.*

The simple fact is that Church of England Christians sincerely hold strongly divergent feelings about homosexuality. The vast majority are affirming up to a point. Only a microscopic minority of zealots believe ethical and cultural differences are matters over which to split the church. Christ is the way, the truth, and the life. He stands above and beyond all cultures. Therefore the only solution has to be to live together, acknowledging difference and respecting others' consciences.

Christians have always taken sharply divergent views on cultural topics. Romans 14 offers a simple model of how to live with such differences, which are not credal but cultural. This model suggests those on both sides of a contentious theological dispute should be convinced in their own minds. They should embrace and advocate the position they believe in, but from faith, not party spirit.

Everyone should consider their impact on the whole church and should not split into tribes. Finally, says Paul, nothing should be judged before the time. God allows such wrangling in order to allow the truth to emerge as disciples interact with each other. Finally, when Christ comes, and not before, the truth may be known to all in its fullness.

The Church of England also bears an outward facing responsibility for the policy about which it drifted along with society in the age of high Victorian moralism, and which it imposed throughout the British Empire. For over 400 years, the church led the way in establishing, enforcing, and criminalizing foreign cultures. The Church of England needs to learn how to relate to former colonial churches on the basis of equality and mutuality. We need to grow out of cultural imperialism and let churches discern for themselves their calling in their contexts. This means shedding some culturally imperialistic attitudes on which the British Empire was built in Victorian times, and which make Church of England practice normative throughout the communion.

However, the vast majority of Anglican primates around the world have recognized the moral and pastoral damage caused by criminalization. In January 2016, Anglican primates gathered in Canterbury and condemned homophobic prejudice and violence and committed themselves to work together to offer pastoral care and loving service irrespective of sexual orientation:

> *This conviction arises out of our discipleship of Jesus Christ. The primates reaffirm their rejection of criminal sanctions against same-sex attracted people.*

Whether, like those who enacted the U.K. legislation of 1967, Anglicans believe that homosexuality is wrong, or, like most members of the Church of England today, they believe it is simply a variant within the spectrum of human sexuality, the Church has now reached a point where it is obvious to almost all that criminalization has been ineffective, pastorally foolish, and morally wrong. It breeds double think and hypocrisy within the Church, and provides a rich soil for abuse and violence across society. The time has come to recognize that responding positively to our call to holiness and the law of love is far more important than enforcing Victorian morality across an empire on which the sun has, thankfully, set.

Rt. Rev. Dr. Alan Wilson is area bishop of Buckingham in the Diocese of Oxford and chair of the Oxford Diocesan Board of Education. He holds a degree in Theology from the University of Cambridge, where he was a history scholar, and a doctorate in historical theology and ecclesiology from the University of Oxford. He is also the author of More Perfect Union?: Understanding Same-Sex Marriage *(2014).*

Awakening to Freedom: A Global South Perspective

The Very Reverend Michael Weeder

Psalm 73:25–26: Whom have I in heaven but thee? and there is none upon earth that I desire beside thee. My flesh and my heart faileth: but God is the strength of my heart, and my portion forever.

I greet you with the traditional Zulu greeting of my country, "Sawubonani" (We see you, all of you), and you are invited to respond with "yebo!" (yes).

It is another way of saying, "You matter." We meet each, however fleetingly, along the way. Let these moments be weighted with respect, kindness, and mutual acceptance that God loves us all.

In 2003, the movie *Proteus* was screened in our new democracy of South Africa. It was inspired by the relationship between two men, the Dutchman Rijkhaart Jacobsz and the first nation African man Claas Blank. They had been imprisoned on Robben Island in the 18th century, at a time when the Cape was occupied by the Dutch under the governance of the Dutch East India Company.

Some of the narrative and factual details of the movie were sourced from a 270-year-old court transcript and give a glimpse into the lives of the accused.

Claas and Rijkhaart had already been serving a lengthy sentence when they were brought up on charges of the crime of sodomy. They were found guilty and executed in the prescribed format informed by the cruel ingenuity of colonial power: their bodies were tied to weighted blocks and cast into the waters of Table Bay, above which looms Table Mountain or Hoerikamma ("the stone from the waters") as it was named by the first nation people of Southern Africa, the Khoi and San.

Jack Lewis, the South African director of *Proteus*, participating in a panel discussion on the movie, in reference to the title of the movie—said, "I arrived at our interest in nomenclature through a coincidence of history." He noted that *Proteaceae,* the giant or king protea, was named as such in the year 1735. (It became the national flower of an apartheid South Africa in 1976.) Seventeen thirty-five was also the year of the execution of Claas and Rijkhaart.

The film, adds Lewis, explores the parallels between the cultivation of this particular flower species "at the same time as the decade-long relationship of our prisoners (and it) allowed us to mobilize the metaphors of binomial classification, and in a broader sense the central question of naming that drove our story: what names could Claas and Rijkhaart have for each other, for their feelings, for the sex they shared?"

Noa Ben-Asher, an Israeli queer legal theorist, adds the following insight when describing the execution scene: "…when the sodomites disappear into the

sea. This, the film argues, is analogous to the classification of people into races and of plant life into families of flowers. The process of naming is erotically charged, and the named becomes the subject of academic (fill in the blank: racist/botanic/homophobic) desire."

On October 9, 1998, the Constitutional Court of South Africa "declared that the common-law offence of sodomy is inconsistent with the *Constitution of the Republic of South Africa 1996.*"

In the section headed "The Treatment of Difference in an Open Society," the following is detailed: "Although the Constitution itself cannot destroy homophobic prejudice, it can require the elimination of public institutions which are based on and perpetuate such prejudice. From today a section of the community can feel the equal concern and regard of the Constitution and enjoy lives less threatened, less lonely and more dignified. The law catches up with an evolving social reality."

The Anglican Church of Southern Africa (ACSA)—which includes South Africa, Lesotho, Swaziland, Mozambique, Namibia, Angola, and the British Settlement of the Island of St. Helena in the Atlantic Ocean—is a committed participant in the Lambeth of 2008–initiated Indaba Process: a dialogic engagement on the matter of human sexuality as part of the church's commitment to establish an appropriate response to the matter of human sexuality. (As Cherie Wetzel described it for Anglicans United, "[Indaba is] a process that South African villages use as a method of engagement for problems that face a set group of people. The word is from the Zulu, and means 'business.' Traditionally, the elder men of the community meet and deal especially with an issue that affects the entire community. The discussion begins on a quite superficial level and then goes deeper and deeper into the gist of the problem, with the sharing ideas and information.")

The ruling of the South African Constitutional Court removed the statute that criminalized same-sex intimacy. In so doing, it presented the Church with both gift and challenge.

This decision gifts us with an impetus, a resource that focuses our attention, spiritually and pastorally. Many of my cathedral parishioners have entered into same-sex unions and the current position of the church prohibits me from blessing their legal standing. And so, while our state has forged the way in its determination, we the church seem consistent with the charge levelled against us in the 1980s, namely that we arrive late and out of breath.

But Miles Davis was right when he said that "there is no such thing as a wrong note"—and Herbie Hancock recalls a performance moment in that celebrated quintet when he played what he believed was "a wrong note," Miles paused, thought about, and then proceeded to musically elaborate on what he had received. "It's what you play afterwards that matters," was the Davisian ruling.

Of specific interest to our conversation here today as part of the worldwide Church is the reference made by the Constitutional Court to "a situation-sensitive human rights approach" focused "not on abstract categories, but on the lives as lived and the injuries as experienced by different groups in our society."

The Con Court's comes from a particularly reflective and thorough methodology that was pursued over many years by the best legal minds, from academia, from the formal institutions of our courts and organization of civil society.

The result is this: the decision came after a protracted and scholarly study of the subject at hand. The nature of the presence of homosexuals in civilization and in our society was defined by members of the affected community themselves. They were seen in the manner that Irenaeus, the second-century bishop of Lyon, understood as when he declared *"gloria enim Dei vivens homo, vita autem hominis visio Dei."*

"The glory of God is the living human," or, "to be alive to the glory of God."

The various permutations of making love, of being, were weighed on the scales of human rights, equality, and the nature of prejudice and the incongruous way in which it normalizes our values.

The conventional Anglican approach to decision-making has, over time, been guided by an understanding informed, firstly, by what Scripture says. Yet we have become alert to what feminist theologians refer to as "texts of terror." Those sections of the sacred text that, for example, depict sexual violence inflicted on women, without any critique. Then there is Reason, the necessity of thought, especially safe-space informed conversation. And of course, the ever-present Anglican sense of tradition: this is often presented as a judgmental critique on what is believed to beyond the bound of orthodoxy, the sphere of "right ideas." But tradition, essentially, is like a calabash—the traditional container, for instance of *umqombothi,* the homemade brew used at rites of passages. It is a semiotic of the ancient, which continues to nurture and nourish in the present. It is not a stagnant pool but a deep and slow-flowing river. We are called to be part of vital, respect-centered engagement of ideas and orthopraxis: the intentional discipleship of those who follow in the steps of Jesus Christ, as the perennial peacemakers of our times.

In South Africa, we have a constitution that I believe rightly calls us as the faith community to give an account of what we believe and deem precious. I am of the Anglican tradition, which is comfortable with the honorific "Father." It is a functional reference to my place in the family of the church. It is informed by the example and practice of my mother. Mum had a preferential bias towards any one of her children who at a given time had special need of her care and attention. And sometimes a rebuke with a rolled-up, wet dishcloth. She looked out for the one who was not the table. She enquired about who was not eating. And why we

were not talking to each other. What was the content of our silence.

Archbishop Emeritus Desmond Tutu has often reminded us, with chortling laughter, that heaven is not for Christians only. And that we'd be very surprised at who we might find there. I once teased the Arch by remarking that should I be able to enter heaven, I would encounter some ruckus and would ask the angel "Who is making all that noise?" and the answer would be, "Oh, that is Desmond Tutu arguing with Jesus. He wants to know why there are so few white people in heaven."

A variation on the heaven-is-not-for-Christians-only theme is the stark challenge of Dorothy Day, a devout Catholic and worker for justice who noted that "I really only love God as much as I love the person I love the least."

In response to the question asked by Jesus Christ, "Who do you say I am?", the Christian is invited to reflect on the quality of our lives lived in relation to each other. Who we say our enemies are and those whom we damn will show those outside our faith community the face of God in these times.

Whom have I in heaven but thee? and there is none upon earth that I desire beside thee.

The Very Rev. Michael Weeder was ordained to the priesthood in 1985 and served as the Secretary of the Black Clergy Association. He is currently Dean of the Anglican Cathedral of St. George the Martyr in Cape Town. He is also Archbishop Emeritus Desmond Tutu's representative on the PEACE and Dialogue Platform, an international peacemaking initiative of Nobel Peace prize laureates.

Building an Ecumenical Dialogue for Decriminalization

Rev. Colin Coward

For the first twenty-two years of my life in the U.K., homosexual sexual activity was illegal. Fortunately I didn't know that when I was playing around with other boys at school. Later, when I was 16, and the curate at my church seduced me sexually, I did know. I knew that if I reported what he was doing, he would likely end up in prison and I would be humiliated. I kept silent. That's one of the effects of the criminalization of homosexuality. People, young and old, live in abusive cultures. Changing the culture from within, if you are, for example, a gay Nigerian, is almost impossible. That is why this conference is so vitally important.

I have spent the past twenty-six years of my life trying to change the culture of the Church of England from within. I have observed the changing attitudes in my church and of the Anglican Communion to homosexuality—some positive, many negative. I have campaigned for a positive change in the attitude towards LGBTI people in the church since 1995. My experience has been very direct. I was invited by Njongonkulu Ndugane, the Archbishop of Cape Town, to address the subsection dealing with human sexuality at the 1998 Lambeth Conference. The invitation was never fulfilled. The bishops refused to meet anyone who was openly gay.

At the end of that conference, I witnessed the plenary session chaired by George Carey, the Archbishop of Canterbury, when the carefully agreed-upon report produced by the subsection was ignored. In its place, a two-hour debate was held on a Global South motion that, after much amendment, was passed by a huge majority, with fewer than 30 bishops voting against. The result was Lambeth Resolution 1.10. My bishop described the atmosphere in the hall as being like a Nazi rally. The anger, prejudice, and abuse vented during the debate was frightening. George Carey was instrumental in the outcome of such a hostile, ambivalent resolution. Later the same day, a pastoral letter in support of LGBTI Anglicans began to be circulated by bishops from the U.S. Episcopal Church, eventually being signed by 180 bishops internationally.

As a result of my experience at the 1998 Lambeth Conference, I began to attend every meeting of the Church of England General Synod, though I wasn't a member. I wanted to build relationships and be present as an unashamedly open gay priest. Discovering the value of this real presence and with the support of my trustees, I attended meetings of the Primates of the Communion in Tanzania and Egypt, and of the Anglican Consultative Council in Nottingham and Jamaica. I have dialogued with Primates and bishops from many parts of the Anglican Communion, both those opposed to LGBTI people and others who support de-

criminalization and full inclusion.

At their meeting in Canterbury in January 2016, the Primates agreed to condemn homophobic prejudice and violence. They reaffirmed their rejection of criminal sanctions against same-sex attracted people. They recognized that the Christian church has often acted towards LGBTI people in ways that have caused deep hurt.

But actions speak louder than words. Two weeks ago, the Diocese of Sydney, a member of the GAFCON group (Global Anglican Future Conference, a group dedicated to preserving the interpretation of marriage as between a man and a woman and to condemning same-sex relationships), donated $1 million to the campaign opposing marriage equality in Australia. The Archbishop of Canterbury declined to write a statement of support for today's conference. It probably didn't occur to him to appoint a bishop to officially represent him here. The continuing hostile actions and the failure to implement the commitment to oppose criminalization are signs of failure, Gospel failure to raise up the broken-hearted and proclaim God's Kingdom of justice for all people.

The GAFCON axis has an intimidating effect on the archbishops and bishops of the Church of England. This has compromised my church's ability to make progress in step with the dramatically changed social attitudes and legal protection and equality in U.K. society. GAFCON Provinces refuse to observe the statements agreed at the Primates' meeting opposing the criminalization and oppression of LGBTI people. Unlike the Provinces of the U.S., Canada, and Scotland, where sanctions have been imposed as a result of their decisions to recognize marriage equality, sanctions are never imposed on the GAFCON Provinces.

The Primates of every Anglican Province have already, in theory, committed themselves to oppose criminalization, and therefore, presumably, to support movements working to remove laws that criminalize LGBTI people. How can further progress be made, how can the Primates be encouraged to implement their commitment?

In England, I have witnessed how social and legal change is effected as people are sensitized and educated thanks to media attention, initially paid to campaigns opposed to anti-gay legislation, then to the injustice perpetrated against LGBTI people, and eventually to coverage of the lives and experience of gay people as members of society for whom equal dignity and protection is a given. In countries like Nigeria and Uganda, with the introduction of anti-gay marriage and anti-homosexuality legislation, a public conversation has been initiated thanks to widespread media and social network coverage. Eventually, as in the U.K. and other countries, this conversation will lead to growing awareness, dawning understanding, and diminishing prejudice leading to decriminalization.

We have to work using the same process within the church.

My own conviction is that God is unconditional, infinite, intimate love. Conservative Christian theology tends to be rooted in a belief that God's love is conditional, restricted to those who conform to so-called "orthodox," traditional dogma and teaching. The Christian dispute about human sexuality is at root a dispute about the nature of God. If I am right in my conviction, and God's love is universal and unconditional, I question whether the hostile stance to LGBTI people held by GAFCON and other conservative networks can be described as Christian.

We need to take personal responsibility for building networks with allies, identifying people who are open and aware, as well as with those hostile to LGBTI people, building an international network to share information, provide support and education, and strengthen alliances between denominations and between Christian and other faith networks.

Rev. Colin Coward describes himself as a contemplative activist. After 17 years of ministry as a Church of England priest in London, in 1995, he founded Changing Attitude, campaigning for equality in ministry and relationships for LGBTI people in the Church of England. Colin believes the "face" of Christianity is being transformed by the life sciences, globalization, climate change, and evolution, with conflicts over human sexuality acting as a surrogate for more profound emergence of faith worldwide. In 2014, the Queen awarded Colin an MBE for services towards equality, recognizing the work of Changing Attitude in the church.

SECTION TWO

OTHER CHURCHES AND DECRIMINALIZATION

Wouldn't it be Nice to Take My Whole Queer Body to Church?

Rev. Basil Coward

Thank you, organizers. It's good to be here. And it is difficult to be here. This queer Black body of mine is experiencing an acute sense of oppression in this contested space.

I was tasked with reflecting on The United Church of Canada's (UCC) process towards affirmation and inclusion of people of all sexual orientation and gender identities, but this afternoon I'm compelled to speak from a place of personal experience and integrity.

There are three things that do not co-exist harmoniously—Blackness, queerness and Christianity—and yet I embody all three. These intersecting identities are more obvious if we take a look at where I spend my days.

You'll find me at the front of a church, where I've served in ministry for twenty-five years.

You'll find me at George Brown College in Toronto where I work as a counsellor, talking to students who find themselves marginalized from many communities, including communities of faith.

You'll find me hanging around the beaches of Barbados, my first home, where my roots run deep.

You'll find me curled up somewhere, carried away by story because I have an extravagant curiosity with oral histories, sacred text, and storytelling.

And you'll find me cruising Church Street (Toronto's gay village), where, when gayness tenderly wrapped herself around me and drew me close, I initially pushed her away. But I have now come to hold her with exuberance, especially because my own experience of comfort and philosophical expansion involved letting go of the church's dogma around sexual orientation, but not around love. This expansion arises from how I experience myself as known by God, above and beyond any fairy tales about God; and it deepens through how costly and valuable this has been for me as a queer Black Christian man who has known such troubles.

I am finally certain that any interpretation of scripture that could generate self-loathing in any LGBTIQ2S+ person is illegitimate. I further know that Christ, and the church, can function perfectly well without such interpretations. And more, that for the church to be legitimate, it must actively denounce such interpretations. The UCC has done this ably, welcoming white LGBTIQ2S+ folks into the church and ministry. Yes, you can be queer in the UCC. But can you be both queer and Black and still enjoy a welcoming, secure, nourishing, celebrated,

and visible presence within the UCC?

This question is not within the scope of this panel. And yet it is!

Because I seek to engage the church in a dialogue about queerness, Blackness and Christianity, and what that means to my Black body—to all Black bodies. I'll share two stories to help us explore first what my perspective means and what it could mean for my membership in or for the other members of the communities I serve as a queer Black Christian man. And then what the decriminalization of sodomy might mean for our Black bodies.

Last week, I was in Edmonton at the Network of Black Clergy of the UCC gathering—which meets biannually in our struggle for voice and for recognition in a church that often does not want to hear or see us. Thus, like many other struggles for justice in the UCC, including that of LGBTIQ2S+ folks, our gathering is a reminder to the church that we are not home as yet—at least not all of us—and it's a struggle for our own liberation.

At that gathering, a young queer Black man said to me, "I live in a world where my body is not safe anywhere, including the church, and I'm exhausted." (And we know, considering the current news cycle, that that statement can be extended to all Black bodies. We also know that while criminalization has silenced people in the past, today Black LGBTIQ2S+ folks are silenced by fear, stigma, suicide, immigration status [or non-status], and violence, and that places of faith, of employment, of enjoyment, of work, can all be safe and welcoming spaces, or they can be places of fear and shame.)

So, with that young Black man, I engaged in a conversation about the objectification of his body, of our bodies. We commiserated about our experiences of homophobia, and the claims that people still lay to our bodies. We talked of anger and violence and we also spoke about pleasure, the sweet titillating pleasure that these queer Black bodies of ours visit upon our souls.

Further, I was able to share with him, and the gathering, my pastoral sabbatical project—funded by The Louisville Institute—entitled: "Wouldn't It Be Nice To Take My Whole Body To Church? The Embodied Struggle for Spiritual Wholeness of Black LGBTIQ2S+ in the Toronto Area." The core question: how have queer Black folks experienced welcome (or not) from Affirming UCC congregations they have visited in the past decade? Anecdotally we know that queer Black folks have not always been welcome in Affirming congregations in the UCC.

Second story. This summer in Barbados, I spent the first three days of my holiday with my nephews and niece and a little friend of theirs. On the fourth day, they showed up again. This time, the little boy stood sulking in the doorway and no one could entice him to enter the place where he had been comfortable just the day before. On the other days, I was the playful, friendly uncle of his friends.

Now, I faced his stares and his sly, distrustful eyes because his mother had told him that I was a buller (fag, battyman), and his grandfather, a respectable stalwart in my community, confirmed for him that indeed I was "a dirty old buller." And with that the boy was commanded not to come to our family house again. So, this precious eight-year-old was whispering to his friends (my niece and nephews), all the while keeping an eye on me to ensure that I did not hear, because, after all he did not want to hurt me.

Something happened that day that was deeply disturbing to me, and that child, and my niece and nephews. How I wish I could proclaim that the vilification, dehumanization, and devaluation of my identity no longer delivers a sudden punch, leaving me gasping for breath and flushed and angry and hurt, but that would be untrue. Each time, it hurts like hell. It pierces. That day my fragile heart was pierced thrice. First for my darling nephews and niece who tried so valiantly to defend me at such a tender age, whispering to him about their experience with me. The dagger plunged again, and my heart was pierced for how that precious boy, having been taught to distrust me, was now unable to trust his own experience with me. The dagger plunged a third time, deep into the heart of the child who cowers inside this queer Black body each time I experience dehumanization.

I spent the final days of my holiday in Barbados pondering what the message to that little boy, the friend of my niece and nephews, might have been from a godly mother and grandfather, both deeply committed members of the Anglican church. And, Bishop Holder, sheep of your flock.

Bishop Holder, I ought not to hold you responsible for each of sheep in your fold. I recognize that this is complex. These are deeply complicated moments, with no villains within them, but maybe some heroes—my nephews and niece and that beautiful little boy for returning the next day. So, the intent is not to demonize the homophobic Barbadian/Caribbean person. And yet, I cannot pretend they are not there, that they are not powerful. Still, I wonder what that conversation could have been if that boy's mum and granddad had affirmed my personhood and fundamental right not to be discriminated against.

Perhaps both because of and in spite of my location at the intersection of queer/Black/Christian and minister, I bring a unique perspective and embodied experience to this dialogue about the decriminalization of sodomy in the Caribbean, especially because what always grounds this intersectionality is my Black body, which overlays all other possible identities that I bring to today's complex questions. And that's why I argue, regardless of theological, colonial, sociological or any other kind of belief, that we need to commit to a moral position, to take a side, to stand unequivocally with queer folks in the struggle for decriminalization. Anything less amounts to standing against us.

Here's my last word. Something or someone divine remains with me,

animates me and grounds my fragile faith. So, these days I've landed in a safe place and I commit to continuing the struggle so that all my queer relatives, particularly my queer Black kin, are able to land in a safe place, too.

Rev. Basil Coward has served in the congregational ministry for 25 years. He is a registered psychotherapist in Ontario, a faculty member and counsellor at George Brown College, and a writer. He holds Master of Divinity and Master of Theology degrees from Wycliffe College, University of Toronto. Basil is Queer and deeply rooted in stories of gospel, a Bajan/Torontonian, and father of two young adult children.

Building Bridges: The Roman Catholic Church and the LGBT Community

Francis DeBernardo

Good afternoon. It is an honor to be among such an august group of presenters who have been passionately working to end oppression against LGBT people, which is too often fueled by incorrect understandings of religious ideas.

My name is Francis DeBernardo, and I am from the United States where I serve as the executive director of New Ways Ministry, a national Roman Catholic ministry of justice and reconciliation, which builds bridges between the LGBT community and the Roman Catholic Church. So, I bring greetings and a report from across the Tiber!

I would like to briefly present some thoughts about the Roman Catholic tradition and how some of its leaders have used our tradition to both support and oppose criminalization laws: a very complex situation. I will give you some theology, an analysis of the current hierarchical atmosphere, and some hopes for the future.

The reason some Roman Catholic leaders have taken opposite positions about criminalization laws is that my church's discussion of sexual orientation and gender identity is influenced by two moral traditions that sometimes come into conflict with each other: the social justice tradition and the sexual ethics tradition.

Briefly, the Catholic social justice tradition promotes the idea that the human dignity of all people, regardless of their state and condition in life, deserves respect and protection by law and by actions. All people are considered equal in dignity, with those who are poor or marginalized deserving the Church's preferential treatment. Church documents have acknowledged that this tradition applies to LGBT people, particularly in situations where their human rights are denied. In fact, in 2008, the Vatican's representative to the UN General Assembly said that the Holy See "continues to advocate that every sign of unjust discrimination towards homosexual persons should be avoided and urges states to do away with criminal penalties against them."

Yet, LGBT issues in Catholicism are also considered through the lens of the church's sexual ethics tradition, which states that all human beings are either male or female, that procreative possibility is essential for all sexual activity, and that sexual activity is permitted only within the context of heterosexual marriage.

So, it comes down to this: how does a church leader respect the human rights of LGBT people while not appearing to approve of sexual activity that the Church condemns? Which tradition should govern this topic? For some bishops, this is

not a problem. But too often other Catholic leaders have erred shamefully in prioritizing the sexual ethics tradition over the social justice tradition, and so they have remained silent, complicit, and even at times supportive of laws that criminalize LGBT people.

But if a balance existed between these two traditions, then we should see Catholic leaders defending the human rights of LGBT people with the same vigor and forthrightness that they defend traditional heterosexual marriage. So why don't they? Besides the homophobia and transphobia that still plagues much of the Catholic hierarchy, some other forces are at work.

In 2015, I received press credentials to cover the Vatican's Synod on the Family, an international gathering of bishops in Rome that discussed sexuality, marriage, and family. At a press conference, I addressed Archbishop Charles Palmer-Buckle, the archbishop of Accra in Ghana, and I pointed out to him that while many African bishops have spoken against marriage for lesbian and gay couples, fewer have spoken as publically against laws criminalizing gay and lesbian people. I asked him, "Do you think that the African bishops, or indeed any bishops, would support a statement from the synod condemning the criminalization of lesbian and gay people?"

He said a sticking point for bishops on LGBT issues is the refusal of foreign governments and foundations to send humanitarian aid unless marriage equality laws were passed. Sadly, the archbishop and his confreres believe that notion, even though it is not true. Indeed, many bishops maintain that promoting LGBT equality is a threat to their national sovereignty

I also spoke with Cardinal Peter Turkson, the president of the Pontifical Council for Justice and Peace at the Vatican, whose position on criminalization laws has been ambiguous. When I asked him to clarify it for me, his answer was similar to Palmer-Buckle's. He said: "My position has had two parts. Homosexuals cannot be criminalized. Neither can any state be victimized. So, let no state criminalize homosexuals, but let no state be victimized. No state should have aid denied because of this." So, the untruth persists, and bishops too often allow this falsehood to prevent them from speaking up for LGBT rights, lest they appear to be bowing to foreign pressures.

Another factor influencing the Catholic discussion on criminalization is the so-called "Francis effect," meaning a new spirit of openness about LGBT issues that has developed since the papacy of Pope Francis began in 2013. The pope's new discourse is indeed a major step forward. However, this new discourse is still very far away from entering into political discussions on LGBT human rights. When Pope Francis visited Uganda in November 2015, he did not make a statement about the bleak legal situation of LGBT people in that predominantly Catholic nation. Though he spoke out against oppression in the countries he visited, he

would not directly name LGBT oppression.

In a similar vein, Cardinal Turkson echoed the pope's reserve on this issue when I asked him what he would say to politicians who supported criminalization laws. Turkson's answer: "I don't think that we should be condemning anybody. People need to grow." That kind of sympathy for politicians is never evident in Catholic hierarchical statements on issues like abortion and birth control.

Another dimension of the Francis effect has been the pope's move to decentralize church authority away from the Vatican and out to local bishops. While such a policy allows for better decision-making on many church matters, in regard to criminalization laws, it allows local ignorance and fear of LGBT issues to perpetuate injustices.

So, in this vague and ambiguous ecclesial environment, we have seen Roman Catholic bishops in Malawi, Uganda, Cameroon, and Nigeria supporting criminalization laws, and in other situations, including here in Jamaica under the previous archbishop, bishops have refused to speak out against them. Still, there is room for hope, thanks to some brave leaders and individuals. In India, when the idea of criminalization was reintroduced in 2013, Cardinal Oswald Gracias, the president of the Indian Catholic Bishops' Conference, was the only religious leader in India to speak out against such a possibility.

Similarly, Bishop Gabriel Malzaire of the nearby island of Dominica said that his diocese affirmed the idea that free sexual acts between adults must not be treated as crimes by civil authorities.

And there have been many more: the Catholic bishops of South Africa, Botswana, Swaziland, Ghana; the Apostolic Nuncio to Kenya; the Apostolic Nuncio to Uganda; the Peace and Justice Commission of the Archdiocese of São Paulo, Brazil; the Catholic Agency for Overseas Development; and a group of U.S. Catholic theologians. My own organization, New Ways Ministry, launched the #PopeSpeakOut Twitter campaign. Whenever criminalization laws become news, we ask our supporters on social media to tweet to the Pope to ask him to speak out against these injustices. On New Ways Ministry's daily blog about Catholic LGBT issues, we cover criminalization news and opinion about church leaders, and we have a category for these stories to filter out these posts for you.

In closing, I'd like to say that in its Catholic social justice tradition, Roman Catholicism has the tools to oppose criminalization laws against LGBT people. No doctrinal argument prevents bishops from speaking out, and in fact, our tradition actually compels them to do so. Catholic leaders should defend LGBT human rights *because* these leaders are Catholic, not *in spite* of their Catholic identity. Catholic bishops need to live up to the best ideals of our tradition, move past homophobia, transphobia, and bad information, so they can help build the reign of God on earth, where all are equal and free.

Since 1996, Francis DeBernardo has served as Executive Director of New Ways Ministry. He has conducted programs on LGBT issues and Catholicism in religious and secular settings throughout the United States, Latin America, and Europe. In October 2015, he was given press credentials by the Vatican to cover the Synod on the Family in Rome, where he raised the issue of criminalization laws with bishops and Vatican officials at the meeting.

Where Politics and Religion Intersect

Rev. Dr. Cheri DiNovo

Hi, everyone. First of all, I want to say: great show of thanksgiving and thanks to Maurice Tomlinson for organizing, and to the Anglican Church for their courage and faith for bringing us all here.

When I was first ordained, which was many, many years ago, and I wore this collar for the first time and walked down Main St. in Toronto, a lovely little man came up to me and said "Good afternoon, Father." I always knew I was queer. I knew that from being a little girl, being chased home from school, being called "dyke" and all those names, along with growing up queer in a not-queer-positive world. And I'd been Christian for a number of years before that man spoke to me, but it was really in that moment that I knew I was a queer Christian. And that's what I consider myself. And I consider Christianity to be a queer-positive religion, and that's why I'm standing here today.

I've had great fortune. In 1988, I walked into a church called The United Church of Canada, which is the largest Protestant denomination in Canada. That year, the United Church took a very brave stand and ordained openly gay and lesbian people. A third of their congregants left the church, and I walked in. And many others like me walked in the doors, and still do.

When I took over my church in the downtown, west-end parish, it was a dying church. That's the only reason I got the job—they had two years left of life—and so I made it my mission to build that church up on an inclusive basis. There I had the privilege and the pleasure of performing the first legalized same-sex marriage in Canada. Two women of color, by the way, were those two individuals, and we did it by reading the banns, an ancient Christian tradition, so we didn't have to take them to City Hall and get refused for a license since this was before the laws changed in Canada. So we read the banns in our church, and our congregation went along with it. Needless to say I was behind the pulpit. We sent the banns form to the registrar's office in Ontario, and lo and behold, the Holy Spirit was at work. The clerk read the name "Paula" as being a man's name—it didn't say "male" or "female" on the form, just "bride" and "groom"—and vetted it. Yay!

The Toronto Star, which is one of the biggest daily newspapers in Canada, and the CBC, the national broadcaster in Canada, and a very good lawyer all rose to the occasion and saved me from losing my license in that instance, and lo and behold, we had made "herstory." I have to say that sadly, my parish didn't back me up, but it helps to have a good lawyer and the CBC on your side.

Because of that, and because of other news we made in our congregation, we ended up having 1,000 people attend our Christmas Eve service. That church

still exists today. I wrote a book called *Queerying Evangelism,* which won the Lambda in Washington, D.C., about building a church based on inclusion, and how yes, you can get bums in pews based on inclusion, not on exclusion, and by doing it, following biblical theology, and being faithful every step of the way. Because of that, a political party asked me if I would consider running for office because they thought I could win, because I had a high profile in my community. They were right, and I did, and I have spent the last 11 years as a member of provincial parliament in Ontario, where we have 13 million people, and I represent 120,000 of them in my district, in downtown, west-end Toronto.

And again, why? Because I'm queer. Because I built an inclusive church. So I'm privileged, I get it. But I've also been at it for 40 years. So, in 1971, I was part of that demonstration you saw earlier today, on Parliament Hill. And when I was a little kid, as I said, I was chased home from school by boys who threw rocks at me. I've had death threats, I've been trolled, I've seen very good friends die, many others commit suicide. And before I tell you what I've done since being in political office, I wanted to talk about a group of people that hasn't been mentioned very much yet today, and that's children. The safety of our children. To raise our children in a safe world.

I can tell you, whatever we do in these conferences, whatever laws we pass or don't pass, whatever take we take theologically, whatever we think sin to be or not to be, 2-10% of our children will grow up to be LGBTQ, and in Canada we say "2S"—"2-spirited"—in honor of our First Nations people who have always had trans people in their midst and honor them. So no matter what we do, these children, our children—and I'm a mother—will exist, and will grow up and we have choices to make about their safety because right now I can tell you—even in Ontario, where we have some of the most progressive laws in North America—trans children are at risk. About 50% of them will attempt suicide or be met with violence from others; about 50% of them will live in poverty all of their days. LGBTQ children are highest at risk for suicide and homelessness. In high school, I was one of them. That is the fate of our children. These are our children. And so it's our decision how to look after them. And the Bible tells us we should love them. And we should love all of our children, including our queer children. So I hold that up for you because to me it's about saving lives. I'm here because I hope to be able to save lives.

So, getting back to my political days. What did we manage to do in political office? First of all, many, many times—and it took many, many years —I tabled a law called "Toby's Law." And Toby's Law is named after my music director at my church, who was trans. Toby died by an overdose, and we erected a stained-glass window of Toby at the piano in our sanctuary, and I said at Toby's funeral, "We're probably the only church in Christendom that has a stained-glass window

of a trans person in their sanctuary." And someone yelled out, "What about Joan of Arc?" So yes, indeed, what about St. Joan of Arc?

So I worked on Toby's Law, and Toby's Law added gender identity and gender expression to the Ontario Human Rights Code. It took us a good five years and many tablings to get all parties' support on that, even the most conservative members voted for that law. That is now the law, and Ontario was the first jurisdiction of its size in North America to pass a law like that. Now it is the law in Canada.

We also, in 2015, passed a law banning conversion therapy. We got that one done in two months. And shortly thereafter—I don't intend that he was inspired by this; we were the first again in North America—but (then) President Obama said that he supported banning conversion therapy. It was good timing. And so that happened. Again, why any of this? To save lives.

Parent equality in 2016: because even with the change of the laws that we had accomplished out of my office—which by the way, is not me alone, never is; there's a group of incredibly dedicated activists, of course, an army of them behind me—we found that queer couples were still having to adopt their own children. So we changed that.

And then finally, this fall, I hope—it will be my swan song bill because I'm leaving politics to go back into ministry in January after four elections in 11 years—we're going to pass Trans Day of Remembrance. We've already acknowledged this in Parliament, where once a year, in November, we stand and have a moment of silence for all those trans folk who have died the previous year, and it's always in the hundreds.

So that's what we've done over the last 11 years in Parliament and, as I say, we've accomplished that with a small army of activists and with the support of the general population of our province, which is almost half the population of Canada, and with incredible amount of prayer and support.

I'm going to leave you with a couple of theological points. I listened with rapt interest to the Archbishop, with his keynote address earlier. One of the theological passages we always heralded in our queer-positive congregation that grew and grew was the very first Christian conversion story in Acts. The very first Christian conversion story in Acts is—guess what? A queer person of color: the Ethiopian eunuch. I advise you all to look at the Rembrandt painting of that moment, because as Jesus said, "There are different kind of eunuchs." There are those who are forcibly, of course, castrated, but there were the other couple of thirds who chose to become eunuchs and who didn't go the surgical route—that's not quite the way that Jesus said it—but who obviously chose not to be heterosexual; in other words, queer folk. The very first convert in Christianity was a queer person of color, and Philip did not want to baptize them. Philip did not want to baptize them because Philip saw them as sexually unclean. And how did that eunuch

convince Philip to baptize them? By being biblically literate. So, is there not a message in that for the rest of us? He quoted scripture to Philip, and Philip said "Wow, you know it better than I do. Okay, we're going to do this thing." So please uphold that.

And the other thing that we used to lead with—those famous binary smashing words of St. Paul. "In Christ, there is no Jew or Greek, no male nor female, no slave nor free." And guess what I would add: no queer nor straight.

That is our tradition, folks. That is our queer-positive Christianity. We don't have to go around talking about those passages that seem to condemn Christianity. We should be talking about those passages that uphold queers in Christianity. Jesus never said a word about homosexuality, but Jesus did say "Love one another as I have loved you." And He did say "Love you neighbor as yourself" and He never qualified who that neighbor was.

Thank you.

Rev. Dr. Cheri DiNovo was the Member of Provincial Parliament for Parkdale–High Park in Ontario, Canada, from 2006 until 2017. She is also an ordained United Church of Canada minister who performed Canada's first legalized same-sex marriage. In 2012, Cheri succeeded in getting Toby's Act *passed, an amendment to the Ontario Human Rights Code to include gender identity and gender expression—the first of its kind in North America. And in 2015, she successfully passed Bill 77, which prohibits "conversion therapy" for youth.*

We Who Believe in Freedom

Rev. Dr. Robert Griffin

Thank you for the invitation to be here today.

From 2006 to 2011, I traveled to Jamaica on behalf of the Sunshine Cathedral in Fort Lauderdale, and for Metropolitan Community Churches, and for the Global Justice Institute. I am here today representing Sunshine Cathedral and the Global Justice Institute.

My travels to Jamaica over the years were to work with individuals of the lesbian-gay-bisexual-transgender community and their allies, to offer spiritual support and encouragement to LGBT people of faith. I was also representing a spiritual movement that affirms the dignity and sacred value of same-gender loving and gender-nonconforming people. And, as a faith leader and a humanitarian, I tried to express opposition to violence against LGBT people.

Individuals living in Jamaica found themselves in danger simply because they identified as gay or were thought to be gay. They needed support, and I was one of several trying to respond to their concerns.

In those days, there were constant reports of people suspected of being gay being chased down, threatened, terrorized, and even brutally killed. The media carried a story of an Easter Sunday funeral of a gay person. While the funeral was taking place, the church was attacked and the congregants had to flee the funeral service.

So, returning to Jamaica brings these memories to mind for me.

I remember meeting with people who were hiding the truth of their lives.

I remember meeting activists who risked their safety to combat homophobia.

I remember meeting journalists, theologians, politicians, students, people seeking asylum, and people living with HIV/AIDS.

I still care about those dear people.

I still care about Jamaica.

I still remember.

When we can do nothing else, we can honor people by holding them in our loving memories.

There is a musical group in the U.S. called Sweet Honey in the Rock. Of their many songs, one is called "Ella's Song" and includes the lyric "We who believe in freedom cannot rest until it comes."

Sodomy laws and other oppressive policies, practices, and attitudes that dehumanize any group or community must be challenged. Even if one were to really believe that same-gender loving people were somehow flawed or were breaking with deeply held religious views, nevertheless, we must allow people the freedom

to live, to love, and to express themselves honestly without fear of being hurt or losing their liberty. We who believe in freedom cannot rest until it comes.

All people, all members of the human family are children of God and deserve to be safe, to live lives of dignity, and to be offered equal opportunity and equal protection. We who believe in freedom cannot rest until it comes.

We who believe in freedom cannot rest until there is a full repeal of the anti-sodomy laws globally. In a world where dozens of countries now have marriage equality, it doesn't make sense for other countries to criminalize relations between consenting adults.

And the church that has too often spread hate in the name of an all-loving God should repent. When the church abandons violence and bigotry, societies will likely follow in their footsteps. For the betterment of humankind, it's time for church and state to recognize and affirm the dignity of all people, including gay and lesbian people.

I say this even though recently, the U.S. was one of just 13 countries to vote against a United Nations resolution condemning the death penalty for people in same-sex relationships. I continue to work within my own country to challenge deadly attitudes and unfair policies. Wherever we are, we who believe in freedom cannot rest until it comes.

The reality is that not only do anti-sodomy laws unfairly target and penalize same-gender loving people, but they also reinforce homophobic attitudes that lead to violence against gays. The damage they do doesn't stop there; such laws also tend to keep people from seeking needed care for certain medical conditions. In an attempt to hide their sexuality, many may not seek help for certain stigmatized infections, and if they aren't diagnosed and treated for diseases, their health suffers. In multiple ways, anti-sodomy laws can harm, even destroy lives. Ending anti-sodomy laws will save lives. We who believe in freedom cannot rest until it comes.

So, I want to sum up my talk with three questions that I felt appropriate for today:

1. What is the opportunity before us to challenge anti-sodomy laws?
2. What is the role of the church in this movement?
3. Where do we go from here?

Whatever our answers or additional questions, I conclude with this hope: May we all be free of the pain caused by anti-sodomy laws, and of the oppressions motivated by homophobia. And I leave you with the profound words of "Ella's Song": We who believe in freedom cannot rest until it comes.

Rev. Dr. Robert Griffin is the Executive Minister at the Sunshine Cathedral in Fort Lauderdale. In addition to his service at Sunshine Cathedral, over the years, Robert has been a youth minister, a military chaplain's assistant, the founding pastor of a congregation, the HIV Field Programming Director for Metropolitan Community Churches, among other roles. He was licensed a Baptist minister in 1984 and ordained in MCC in 1998. He holds a Master of Divinity degree from the Episcopal Divinity School and a Doctor of Ministry degree from the Florida Center for Theological Studies.

Adventism and Decriminalization: Notes from the Global North

Dr. Keisha E. McKenzie

This conference seems to have produced an exciting if unsettling week for the local Jamaican church and reporters at the *Gleaner* and *Observer*. Articles published yesterday suggest that they are unclear about several facts so I'll introduce myself this way: as the child of Jamaicans, one who graduated with highest honors from Northern Caribbean University in the misty past, and as a Seventh-day Adventist.

What I'm *not* is an *employee* of the Seventh-day Adventist church in Jamaica or anywhere else in the world. I am an active member of Adventist congregations and the wider lay Adventist community. The local church administration chose to be missing in action this week, but, as the organizers realize, the footprint of the Seventh-day Adventist church in Jamaica—including a Governor-General, a prime minister, one of the three largest universities, and a multitude of civil society leaders and others of influence—is simply too large for there to be an empty Adventist chair in this space. So for the next two days, I'm going to sit in this chair. Perhaps paid church employees will be more willing to engage next time.

While I will not be speaking *for* the church corporation at any time or debating the denomination's faith statements, I will in both panels speak *about* it, quoting from or referencing statements made by Adventist spokespersons, employees, lawyers, theologians, pastors, and lay members like myself, as well as several other sources that are part of the public record and as accessible to any of you as they have been to me.

At the outset, however, I'll also say that discussing sex, sexuality, identity, and faith exclusively through the legal lens of criminalization and decriminalization means that even on topics such as how humans know themselves, connect with each other, and honor God, real people are made background noise. Focusing on law and policy to the diminishment of people, while failing to name rape and abuse as such and conflating relationships of mutual care with criminal acts, overshadows the impact of generalized stigma and discrimination on ordinary people and their family systems. Rather than using civil law or religious policy to support and enlarge human life, we're using people to prop up our attachment to law and compliance. The outcome in all three of my cultures is the demonization of people who are presumed to be or are actually LGBTQIA (lesbian, gay, bisexual, transgender, queer, intersex, and asexual), who are socially stigmatized and minoritized in the legal and policy climate we have created.

As others may have said this morning, although British colonial law (now in

our context Jamaican post-colonial law) criminalized specific sex acts between adults regardless of sexual orientation or mutual consent, in regions where it's still current law, it has in practice been used to prohibit those specific acts between consenting adult *men*. It has further been generalized and popularly understood as a sanction against *all* sexual expression between same-sex partners, and, consequently, a legal and social sanction against LGBTQIA people regardless of relationship status or sexual expression. Thus, a purportedly universal civil law based on presumptions about what's decent and what's natural has yielded very specific stigmatizing legal and social outcomes for LGBTQIA people. Those outcomes affect members of this population whether they themselves practice only penile-vaginal penetration and regardless of whether the heterosexual married people "othering" or prosecuting them under the law also do.

There is a legal and social legacy of so-called "sodomy" laws here and around the world, and our respective religions bear significant responsibility for that impact. As my colleagues in Uganda, Kenya, Rwanda, and other African states have explained to me, that legacy turns visible LGBTQIA people from contributing and respectable members of society to a troubled category of "unapprehended criminals" (e.g. Mugisha, 2014; Mason-John, 2013). As I've argued recently, "Beliefs have real world consequences for real, live people, and real world consequences can be measured… Permitting discrimination and marginalization for one group creates vulnerabilities for all groups" (McKenzie, 2016).

So I come to this conference with a lot of curiosity about the wider context for how my religious community has engaged the LGBTQIA community. As I explored the church's papers, journals, records, and statements, I realized that the Seventh-day Adventist approach to the lives of LGBTQIA people is rooted in our historical approaches to religious and civic law. Over its 154-year history, the Adventist denomination has engaged in religious liberty and civic activism, and as it has done so, it has acted on the premise that the church has one appropriate lane of authority, the state has another separate and distinct lane, and that the church should carefully monitor these lanes so as to prevent both state interference in religious matters and religious tyranny's "improper influence" on individual conscience or minority populations (London, 2009; Moore, 2013; White, 1911).

I like how General Conference President Ted N. C. Wilson defined this in 2013: "keeping the church at arm's length from the state" (Wilson, 2013). According to Wilson, the principle of religious liberty precludes the Adventist church from accepting the belief that any nation-state rests on Christianity as its official faith or source of law. It also precludes Adventists from using faith "as a cudgel" or civic legislation "to coerce" other people *(ibid)*. This principle, which the General Conference uses to monitor official church activity around the world, is rooted in traditional Adventist theological teachings about the separation of

church and state. Specifically, since the church's founding in the 1860s, Adventists have anticipated a time in contemporary history when church members would become othered and persecuted under civic state law. That expectation of future state persecution has understandably checked the church's willingness to either seek civic power or use it to target other populations.

A closer look yields a more mixed picture. Highlights from the church's 154 years of religious liberty activism include A.T. Jones's testimony to Congress in 1888 (Jones advocated for Adventists' ability to observe the Sabbath in a climate where Sunday sacredness was being grafted into local, state, and potentially national law). In his testimony, Jones noted that "religious bigotry… knows no such thing as progress or enlightenment; it is ever the same." He also said, "No man can allow any legislation in behalf of the religion, or the religious observances, in which he himself believes, without forfeiting his own religious freedom" (1989).

Another historical highlight is an appeal for liberty from the Southern Union's secretary of temperance and religious liberty, S. B. Horton, to the Louisiana state legislature in 1908. Both Jones's and Horton's appeals address religious liberty in terms of civil rights and not only in terms of sectarian theology. Interestingly, the Horton address, mostly about alcohol, also records a church spokesman "welcom[ing] restrictive legislation" against sex or marriage between white and Black people—in the name of pure morals and civic order. That should be a familiar argument to the people in this room (Horton, 1908, p. 4).

But Horton also foreshadowed the current GC president's argument about using Caesar to establish religious convictions: "Even if Sunday was the true rest day given to the church," Horton wrote, "it would be wrong for the state to enforce acceptance of a purely religious tenet… the passing of [religious] laws is a long step toward the union of church and state" (p. 10). And he further opposed such laws because "their primary purpose is to protect a religious institution, rather than to protect all citizens in the enjoyment of their natural and inalienable rights" (p. 11).

In the last thirty years, though, the North American Division, which serves the United States, Canada, Bermuda, and parts of Micronesia, has mostly sought to avoid public controversy on matters of civil law. Its staff members engage civil rights topics indirectly, through national or regional public affairs and religious liberty offices and legal "friend of the court" briefs. The church's brief strategy allows it to engage the current U.S. Supreme Court, which through cases like *Hosanna-Tabor v. EEOC* (2012) and *Burwell v. Hobby Lobby* (2014) has been unusually deferential to religious agents, organizations, and businesses providing services to the general public.

More recent cases such as *Gloucester County School Board v. G.G.* (vacated) and *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (pending)

explore the place of LGBTQIA people in civil society, and have inspired the church's lawyers to narrow their scope to how the legal questions are defined and skip over the theology or ethics of sexual minorities' morality, dignity, or rights.

There have also been exceptions. In 2004, the religious liberty director of the Adventist Church in Canada argued in print that civil marriage for "our neighbors who are struggling with immoral sexual inclinations" was part of "the greatest assault on religious freedom in recent memory" (Bussey, 2004). As California considered adopting civil marriage equality, the General Conferences Administrative Committee (ADCOM) issued a statement about "same-sex unions," the Pacific Union of Seventh-day Adventists publicly supported Proposition 8, and the North Pacific Union Conference of Seventh-day Adventists "urge[d] all state governments in the Northwest to reject any attempt to redefine marriage" (GC, 2005; NPUC, 2005). Seven years later, General Conference and North America Division staff promoted "no" votes on civil marriage referenda in two states, including at a large congregational forum in Spencerville, MD.

Outside the United States, the Southern Africa Union opposed South Africa's LGBTI-supportive constitution (2006) and subsequent marriage equality (Charles, 2006). The South African constitution was the first in the world to protect citizens from discrimination based on sexual orientation by the state or between individuals. To preserve equality and dignity, the constitution also specifically banned employment, healthcare, foster and adoption service, and public accommodations discrimination (SA History, 2011). In 2011, administrators of the British Union used the church's official newsletter to encourage members to sign petitions against civil same-sex marriage. A union staffer called the proposed equality laws "a personal challenge to Adventists," and the BUC president alleged a nefarious LGBT "strategy" to "desensitize" the public to non-heterosexual immorality.

Finally, at the denomination's mostly heterosexuals-only conference on gender and sexuality (in 2014), the General Conference general counsel made an about-turn from the church's 19th-century position on using civic law to benefit religious institutions rather than to benefit all people. The GC general counsel told delegates that denominational hiring, firing, and policy practice would be easier if more countries criminalized homosexuality and if the church opted out of non-discrimination (that is, opted *into* discriminatory practice) in countries where decriminalization has already happened (cf. Charles, 2006; Cruz, 2014). Here in Jamaica, representatives of the Jamaica Union have repeatedly declared that LGBT civil rights aren't human rights, and that the union "stridently opposes" repeal of the laws we're discussing today (Gilpin, 2016).

It may be surprising, then, that when Uganda, Nigeria, and several other African and Asian nations began a new round of LGBTQIA criminalization,

the denomination's religious affairs staff weighed in on one of them. Public Affairs and Religious Liberty staffer Dwayne Leslie wrote that the Ugandan Anti-homosexuality Bill, which imposed a constellation of severe sanctions against LGBTI people and heterosexual people who "counseled" them or failed to turn them into authorities, was "abhorrent" and "incomprehensible" (Leslie, 2014). In the same article, Leslie plainly stated that it was "wrong to criminalize" homosexuality and also claimed that the denomination "vehemently oppose[s] governments passing legislation to compel morality."

Whether the church does in fact vehemently oppose using state force to constrain or compel social minorities is debatable, but it was telling that it felt compelled to declare that it does. The denomination has not publicly addressed LGBTQIA criminalization movements in Nigeria, Kenya, Russia, or India over the past decade to the degree it addressed Uganda—if it has addressed them at all. Church papers and statements have instead underscored status quo theological and policy hostility to the LGBTQIA population rather than rein in what Leslie described—at least in Uganda—as an "abhorrent" use of the church's moral and social authority against minorities. It might be relevant that there has been unique international attention to the links between American evangelicals like Scott Lively, the Family Research Council, and The Family, and legislation criminalizing LGBTQIA people, relationships, sexual expression, and free association in Uganda (Blake, 2014; Mugisha, 2014). There has been far less attention to the slow decriminalization process in the United Kingdom since 1967, civil equality in continental Europe, or Adventist administrators ministering creatively to LGBTI people in the Netherlands Union Conference (2014).

I hope this survey shows that sometimes a denomination's moral interventions in civil society may have a self-interest motive even if they also have theological justifications. But what benefits the church *corporation*—for example, making norms so explicit that it is easy to hire and fire employees and disfellowship members—isn't always what's beneficial for the church *body*. Despite the moral imperative to "make men whole" that Adventism draws from scripture and its earliest founders (Nichol, 1956), the global church has largely failed to learn from its clinical professionals, particularly psychologists and social workers whose disciplines require them to navigate the territory between affirming professional ethics and restrictive religious teachings about LGBTQIA people (e.g. Patrick, 2012; Ruben, 2015; VanderWaal, Sedlacek, & Lane, 2017). In one recent survey of LGBT+ Adventist millennials and college students, for example, Andrews University researchers found that Adventist "caregivers, clergy, and religious congregations were generally not considered to be good sources of social support for respondents" (McKenzie, 2017). I don't believe this impact is because Adventists are bad helping professionals or intend to serve this population poorly.

Rather, any ambivalence toward LGBTQIA people flows from the only beliefs about LGBTQIA people that church workers are authorized to hold or publicly express. (This again partly explains their absence today.)

Yet, back in 2014 when Uganda attempted to criminalize its LGBTI population and Ugandan Adventist leaders advocated turning state law against their neighbors, global church workers asked their colleagues to consider, "How are we to behave in the face of behaviors with which we disagree? Clearly, with love." And Elder Wilson, who does not affirm LGBTQIA people, more directly said: "My fellow Seventh-day Adventists around the world and I believe that we serve a wonderful and mighty God who cherishes religious liberty and grants each individual the right to believe or not to believe in harmony with the dictates of their own conscience" (Wilson, 2013).

So according to the current General Conference president, it is against Adventist teaching to use the force of the civil state against other people even if so doing appears to protect the church's institutional or legal interests. While it is not against consistent church practice to do so, the General Conference and LGBTQIA Adventists around the world including those represented by Seventh-day Adventist Kinship International agree on that basic principle (SDA Kinship, 2012; SDA Kinship, 2014). As they spoke up for LGBTQIA church members being stigmatized and criminalized in East Africa this decade, Kinship's communications team wrote:

> *[The criminalization of LGBTI people] violates fundamental human rights, is a vehicle for discrimination, and is contrary to the character of Jesus Christ and the value system that our church promotes. We are each part of the diverse human family, and God calls us to love one another, to love our neighbor as we love ourselves. That includes loving our LGBTI neighbors, not scapegoating them, ostracizing them, or imprisoning them for consensual relationships.*
>
> *Regardless of the church's stance on human sexuality and gender roles, we believe that the Seventh-day Adventist church should never actively or passively promote the violation of basic human rights.*

The open question for Adventism on this topic is how to go beyond sentiments of love and kindness and actually deal justly with others, per Micah 6:8. As Cornel West has said, justice is what love looks like in public. Perhaps that's especially true where parties disagree. President Wilson has outlined a way for the church to move forward, honoring both its convictions and religious liberty. It is up to all of us to wrestle with the implications for our context.

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References

Ackerman, P. "Do unto others: A blueprint for religious leaders on global LGBTI rights." *Huffington Post.* October 5, 2017.

ANN Staff. "Seventh-day Adventist world church vote statement on transgenderism." *Adventist News Network.* April 11, 2017.

Blake, M. "Meet the American pastor behind Uganda's anti-gay crackdown." *Mother Jones.* March 10, 2014.

Bussey, B. "Why silence is not an option." *Liberty Magazine*. September/October 2004.

Charles, P. "South Africa: Church reaffirms marriage as biblically defined heterosexual union." *Adventist News Network*. December 10, 2006.

Cruz, E. "The Seventh-day Adventist church should remember the greatest commandment." *Huffington Post*. May 26, 2014.

Drumm, R. "No longer an oxymoron: Integrating gay and lesbian Seventh-day Adventist identities." In S. Thumma & E.R. Gray (eds.), *Gay Religion.* Walnut Creek, CA: Altamira Press, 2005. (pp. 47-65).

Gilpin, J. "No to gays! Adventists urge government to keep God in deliberations on buggery law." *Jamaica Gleaner.* March 28, 2018.

Horton, S.B. "To the honorable members of the senate and house of representatives of the general assembly, Baton Rouge, La." *Official Journal of the Proceedings of the Senate of the State of Louisiana at the First Regular Session of the Third General Assembly Under the Adoption of the Constitution of 1898; Begun and Held in the City of Baton Rouge, May 11, 1908.* Baton Rouge: The Daily State Publishing Company, State Printers. (pp. 101-104).

Jones, A.T. "The national Sunday law: Argument of Alonzo T. Jones before the United States Senate Committee on Education and Labor." *American Sentinel.*Washington, D.C. December 13, 1888.

Leslie, D. "Why Uganda should consider the greatest commandment." *Huffington Post.* March 18, 2014.

London, Jr., S. G. *Seventh-day Adventists and the civil rights movement.* University of Mississippi Press, 2009.

Mason-John, V. "What's in a letter?" In S. Ekine & H. Abbas (eds.), *Queer African reader.* Pambakuza Press, 2013. (pp. 309-315).

McKenzie, K. "Summer reading group: Sex and privy." *Spectrum.* October 12, 2015.

Ibid. "Summer reading group: Mindsets of respect, regimes of respect." *Spectrum.* August 8, 2016.

Ibid. "Despair and resilience among LGBT+ Adventists." *McKenzie Consulting Group.* March 17, 2017.

Moore, M. "God's ten commandments." *Seventh-day Adventist Church*. 2013.

Mugisha, F. "I am a gay Ugandan about to go home. This law will tyrranise my life." *The Guardian.* March 20, 2014.

Netherlands Union Conference. "Church in the Netherlands commits itself to being a safe place for LGBTI individuals." *Spectrum Magazine.* April 24, 2014.

Nichol, F.D. "Why Seventh-day Adventists conduct a medical program." *Ministry.* May 1956.

North Pacific Union Conference of Seventh-day Adventists [NPUC]. "A declaration and appeal." GleanerNow.com. April 1, 2005.

Patrick, A. "Post 53: Homosexuality in pastoral perspective: Notes on a continuing conversation." *Adventist Studies.* April 6, 2012.

Popescu, M. & Drumm, R. "Religion, faith communities, and intimate partner violence." *Social Work and Christianity,* 36(4). 2009.

Ruben, J. "Evolving education: Christian beliefs and sexual orientation in the classroom." *Social Work Today.* September/October 2015.

Seventh-day Adventist Kinship International [SDA Kinship]. "Kinship response to the Uganda situation." Press release. December 9, 2012.

Ibid. "Kinship response to Ugandan parliament passing the anti-homosexuality bill." Press release. January 9, 2014.

South African History Online [SA History]. "Why protect rights of gays and lesbians?". March 30, 2011.

VanderWaal, C., Sedlacek, D., & Lane, L. "The impact of family rejection or acceptance among LGBT+ millennials in the Seventh-day Adventist Church." *Social Work and Christianity,* 44(1-2): 72-95, 2017.

White, E. *The great controversy (Conflict of the ages series).* Nampa, ID: Pacific Press, 2005/1911.

White, H. *Reforming Sodom: Protestants and the rise of gay rights.* Chapel Hill: The University of North Carolina Press, 2016.

Wilson, T. "Keeping the church at arm's length from state." *Huffington Post.* November 6, 2016.

Approaches to Decriminalization in Scotland, England, and Wales

Dr. Matthew Waites

I arrive at this discussion as an academic based at the University of Glasgow, in the context of my research across the Commonwealth, which has included the co-edited book *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change.* While the book considers the Commonwealth's relationship to discussions of decriminalization, we need to keep in mind the problematic ways in which the Commonwealth has been shaped by colonial histories—for example, Queen Elizabeth II remains Head of the Commonwealth, and was the sole signatory of the Charter of the Commonwealth (The Commonwealth, 2013). However the Commonwealth is not my focus here, but rather church discussions in particular national contexts.

The task I have been asked to undertake here is to consider the approach of the churches in Scotland to the decriminalization issue, relative to the churches in England and Wales. I am glad to do so, especially since one of the most important themes to emerge from our book's comparative analysis of human rights struggles across the Caribbean was the very important role of churches and other religious organizations in decriminalization debates worldwide. In particular, the analysis highlighted the positive role that churches can play in taking moral understanding forward (Lennox and Waites, 2013, pp. 517–519).

I've been asked particularly to address the different approaches to decriminalization of same-sex sexual behaviour that have existed in the Church of Scotland and Church of England. I will be speaking from a historical perspective on the debates over this issue, with a focus on what can be learned from the decriminalizations in England and Wales in 1967, and much later in Scotland in 1980. As context, I was born and educated in England but have lived and worked in Scotland for over a decade.

Clearly, in the context of colonialism, it is not easy to draw from these discussions about the U.K. and apply them to Jamaica and the contemporary Caribbean. The nations of the Caribbean formed through decolonization and new nationalist projects have been conceived to provide stability and resilience against external economic and political pressures. Some associated understandings of family and relationships thus have a particular contextual fixity—as I return to in the final section. However, I want to argue it is useful to reflect on the internal power relations within the United Kingdom, particularly the problem of English power over Scotland. This focus on Scottish nationalism's contextual formation, with associated moral understandings, may reveal certain resonances with the postcolonial

experience of Jamaica and other Commonwealth Caribbean states.

England and Wales: the Church of England

Before turning to Scotland, I want first to comment on the relationship of the Church of England to the debate over decriminalization beginning in the 1950s. Here we have had several excellent presentations this morning—particularly from the Rt. Rev. Dr. Alan Wilson representing the Church of England—so my comments are to elaborate on specific aspects.

The most detailed and insightful discussion of the role of the Church of England that I have found in the academic literature comes in an article from the *Journal of Ecclesiastical History,* published in 2009. This is by Matthew Grimley from Merton College at Oxford University. The article is titled "Law, Morality and Secularisation: the Church of England and the Wolfenden report, 1954-1967" (Grimley, 2009). The title refers to the *Report of the Departmental Committee on Homosexual Offences and Prostitution,* which became known by the name of the committee chair, John Wolfenden (Committee on Homosexual Offences and Prostitution, 1957). Grimley's contribution was previously highlighted as significant for explaining different approaches in England and Wales compared to Scotland, in my own full analysis of decriminalizations within the United Kingdom (Waites, 2013; pp. 151, 175).

Grimley argues convincingly that "the role of the Church of England in the reforms of the 1960s has been neglected" (Grimley, 2009, p. 725). In particular, he highlights the key role of the Church of England's Moral Welfare Council in the early 1950s, prompting the creation of the Wolfenden Committee by a Conservative government from 1954. More specifically, the Moral Welfare Council began investigating homosexuality after its study secretary, Anglican priest Derrick Sherwin Bailey, wrote an article in the periodical *Theology* in 1952 that initiated a debate over the legal position of homosexuals (Grimley, 2009, p. 728).

The Moral Welfare Council subsequently published a pivotal interim report in 1954, *The Problem of Homosexuality,* which was a key influence on government. Grimley notes the initial report was widely cited by supporters of an enquiry including *The Sunday Times* and the influential Conservative Lord Boothby. The Moral Welfare Council later submitted a final report to the Wolfenden Committee, published in 1956 as *Sexual Offenders and Social Punishment* (Grimley, 2009, p. 728).

We can see how for the authors of those Church of England reports it was axiomatic that public and private morality, law and sin should be separated. There was no overt emphasis on the idea that human rights included a right to privacy, as expressed in Article 12 of the Universal Declaration of Human Rights (United Nations, 1948), or Article 8 of the European Convention of Human Rights (Coun-

cil of Europe, 1950). Nevertheless, the implicit understanding of an entitlement of privacy emerged strongly in the Church of England's approach.

However, we must recognize that the Moral Welfare Council was not representative of wider Church of England opinion. We should also emphasize that these interventions were underpinned by a Church view of homosexuality as a psychological condition of those described in *Sexual Offenders and Social Punishment* as "inverts," "handicapped by inversion" (Grimley, 2009, p. 729). Moreover, homosexual acts were still seen as inherently sinful.

Grimley argues that existing histories of the reformist legislation of the 1960s have overestimated the extent to which state regulation responded to pressure from new social movements:

> *Most histories of the permissive reforms have concentrated on the activities of pressure groups, assuming that the role of official bodies was always reactive rather than proactive. To argue that institutions (especially religious ones) could themselves have been agents … has been too counter-cultural for some tastes (Grimley, 2009, pp. 725–726).*

In this Grimley is somewhat inaccurate, since the emphasis of leading gay commentators like Jeffrey Weeks has been that the Wolfenden committee sought social control, and that the groundbreaking Homosexual Law Reform Society only emerged after the Wolfenden report (Weeks, 1977; Weeks, 2012, pp. 306–356). Nevertheless Grimley's argument works against some more mainstream views of change (Grimley, 2009, p. 731).

Conversely Grimley argues that existing academic history literatures have underestimated the positive role of the Church of England in initiating a valuable moral debate that led to legal reform. "The Church was prominent in a number of campaigns for legal reform, on homosexuality, the abolition of the death penalty and the rights of immigrants" (Grimley, 2009, p. 726). Here Grimley appears to be correct, and therefore existing narratives of how law reform emerged need to be rethought. Grimley shows that senior Anglicans were promoting distinctions between sin and crime, and a secularisation of law, even while many Church members disagreed.

For my purpose here, the central point is the extent to which people in senior positions in the Church of England, particularly but not only its Moral Welfare Council, exercised positive agency in favour of decriminalization from early in the 1950s. This accentuates a contrast with Scotland.

Scotland

Decriminalization legislation was only passed in 1980 in Scotland, coming into effect in 1981—many years later than the 1967 law reform in England and

Wales. There was fierce debate within the Church of Scotland after the Wolfenden report was published in 1957, but the outcome was clearly for that Church to oppose decriminalization, in contrast to the other major churches in Britain.

There have now been studies discussing reasons for this difference. Roger Davison and Gayle Davis have argued that opposition from the Scottish churches was one of the key reasons decriminalization occurred later in Scotland—the other factors being a lack of appetite among Scottish politicians; opposition in media institutions; and differences in Scottish law, where consensual private acts had rarely been prosecuted due to higher evidential requirements (Davidson and Davis, 2012; discussed in Meek, 2015, p. 2).

It is my colleague Dr. Jeff Meek at the University of Glasgow who has provided the most recent in-depth analysis of the reasons for the Scottish difference, particularly in his recent book *Queer Voices in Post-War Scotland: Male Homosexuality, Religion and Society* (Meek, 2015a). Meek uses varied documentary sources as well as oral history interviews with 24 gay and bisexual men. To develop a more nuanced view than previous accounts, and to move beyond a simple emphasis on Church of Scotland opposition, Meek explores "ambivalence, contradiction and disagreement" within the Church of Scotland and other churches in Scotland (Meek, 2015b, p. 597).

Meek has emphasized that within the Wolfenden Committee, the most prominent Scottish member was James Adair, a procurator fiscal who was an elder of the Church of Scotland (Meek, 2015b, p. 599). Adair's negative attitude towards decriminalization both embodied and set the tone for the Scottish debates that followed (Meek, 2015a, pp. 46–52). However the Church of Scotland did not present evidence to the Wolfenden Committee (Meek 2015b, p. 598), and although the Reverend F. V. Scott was an original committee member, he resigned in 1956 (Meek, 2015a, p. 107).

Meek nevertheless argues that after the report was published, the Church of Scotland endorsed Adair's Scottish critique of the Wolfenden report (Meek, 2015a, p. 107, pp. 137–138). Yet he also shows how, in 1956, the Church of Scotland's Church and Nation Committee (CNC) was inspired by the Wolfenden Committee context to create a subcommittee investigating homosexuality; and that this subcommittee came to favour Wolfenden's proposals by 1958, even while the CNC remained opposed (Meek, 2015b, pp. 600–601). Meek also notes that while the Roman Catholic Church in England supported partial decriminalization, the Roman Catholic Church in Scotland made little comment. Meanwhile the Free Presbyterian Church in Scotland was deeply opposed to decriminalization, as was the Free Church of Scotland, until after decriminalization in 1980 (Meek, 2015b, p. 601).

But where earlier commentaries have emphasized the pivotal influence of the

churches in the rejection of the 1967 decriminalization, particularly the Church of Scotland, Meek puts more emphasis on organizational ambivalence over the legal status of Scottish homosexuals. In this view, a central reason for lack of pressure for decriminalization was ambivalence over whether, in light of a lack of prosecutions, decriminalization was necessary. Hence we should move away from simplistic accounts of church influences, and fully consider the diversity of views among church members. Differences existed between church leaders and emergent voices from lower in church hierarchies and the wider society, and such emergent voices are interesting to reflect on further.

Church engagements with homosexual rights organizations in Scotland

Meek focuses on the theme of "reconciling religious identities and sexual identities," particularly in Chapters 5 and 7 of his book. He uses archived documentary sources to discuss engagements of churches with the Scottish Minorities Group, as the groundbreaking group for law reform on homosexuality; also using oral history interviews, including with six men who had held church positions—one as a Church of Scotland minister. The majority of interviewees "attributed much of the blame for Scotland's backward legal position to the churches" (Meek, 2015a, pp. 106–107). However, Meek argues the reality was more complex. In particular, by exploring relationships between Scottish Churches and homosexual law reform organizations, he demonstrates that such relationships existed and "were often complex and contradictory" (Meek, 2015b, p. 598).

Meek argues that by the late 1960s, parts of the Church of Scotland were "proactively engaging with the Scottish homosexual law reform movement" (Meek, 2015a, p. 3). A member of the Church of Scotland's moral welfare wing began liaising with the Scottish Minorities Group. This occurred from the very first meeting of the group in 1969 (Meek, 2015a, pp. 106–112).

One of the striking features of Meek's research is that it reveals differences between the official discourse of church leaders, and the more accommodating practices of some junior ministers and church members in everyday circumstances. This comes through particularly in Meek's original account of the relationship of the lesbian and gay activism of the Scottish Minorities Group with specific figures and institutional spaces in the Church of Scotland and the Roman Catholic Church in Scotland.

Meek comments that from the first meeting of the Scottish Minorities Group in 1969, there was contact between the group's instigator and the Reverend Ean Simpson, "an Argyllshire minister of the Church of Scotland." This led to "regular and supportive" communications (Meek, 2015b, pp. 607, 608). More remarkably "many early meetings of the organization were held within church properties," especially at the Church of Scotland's "Edinburgh premises in Queen

Street" (Meek, 2015b, pp. 608, 611).

When the Scottish Minorities Group found itself "frozen out of the Church of Scotland" for offering social activities to participants (Meek, 2015b, p. 609), the group found unlikely support from the Roman Catholic Church, with which it became "intimately involved" from the early 1970s (Meek, 2015a, p. 3). According to Meek, "Father Anthony Ross, the Catholic chaplain to the University of Edinburgh, offered the SMG use of a meeting room from the end of 1970"; use of premises on George Square was allowed, which saved the organization in the view of a leading figure (Meek, 2015b, p. 611). Having a venue to meet regularly was a crucial resource for the small group that was emerging.

Jeff Meek's research thus reveals the subtleties of constructive relations between emergent lesbian and gay organizing, the Church of Scotland and the Catholic Church. The point I would draw from this is our need to appreciate the complexity and diversity of relationships between members of church communities and members of lesbian, gay, bisexual, and transgender (LGBT) communities. Even when leaders and elites are unable or unwilling to engage in dialogue, constructive conversations and engagements can still emerge at grassroots level. The detailed study of Church activity reveals there have always been groups within the Churches, in Scotland as well as in England and Wales, who have been sympathetic to the case for decriminalization.

To bring the story up to date, in recent years Church of Scotland attitudes have shifted. In 2015, the Church of Scotland voted to allow people in same-sex civil partnerships to be ordained as ministers and deacons (Church of Scotland, 2015). On May 25, 2017, the Church of Scotland General Assembly voted to approve an apology for the Church's history of discrimination against gay people; it also approved a report instructing official to review church laws which could open the possibility of some ministers performing same-sex marriages (Church of Scotland, 2017). These developments are widely seen in Scotland as reflecting broader changes in Scottish culture and society.

Conclusion: What can be learned?

What can be learned from the differences between England and Wales and Scotland, and particularly the different histories and experiences of the Church of England and Church of Scotland, in relation to decriminalization?

The Caribbean feminist Jacqui Alexander argued in a well-known article, "Not just anybody can be a citizen," that the context of decolonization led Caribbean nationalisms to be formed with an emphasis on the moral purpose and validity of the nation state (Alexander, 1994; Alexander 2003). She suggests this can help explain both why many Caribbean states maintained aspects of English criminal law after independence, particularly regarding sex offences, and she also

suggests it partly explains later regulation on sexual offences from the 1980s and 1990s:

> *The state's authority to rule is currently under siege; the ideological moorings of nationalism have been dislodged, partly because of major international political economic incursions that have in turn provoked an internal crisis of authority. I argue that in this context criminalization functions as a technology of control, and much like other technologies of control becomes an important site for the production and reproduction of state power (Alexander, 2003, p. 174).*

These comments continue to resonate in the contemporary context of international neoliberal economics and associated social anxieties that foster demands for a strong state and moral nation to achieve crime control and social order. The problem identified here is that while legislation against sexual violence, for example, has been desirable, homosexuality has somewhat been conflated with other issues.

In this light, I would suggest that it is possible to identify a parallel between the ways in which the Scottish nationalist project, associated with the Scottish National Party, sought to assert moral authority in the 1970s, and some forms of nationalism that have been articulated with morality and Christianity in Caribbean states like Jamaica. Scottish politics and cultural identity in the 1970s, somewhat expressed in the preceding discussion of Scottish church approaches, was slower than in England to engage with gay politics (Hassan, 2017). Winnie Ewing, as a leading figure in the Scottish National Party of the 1970s, showed limited support for liberal reforms related to same-sex relationships. An emphasis on Scottish cultural difference, in the Labour party as well as the SNP, seems to have contributed to delaying decriminalization in Scotland until 1980. I suggest this cautiously, to open further discussion through consideration of both Scottish history and the contemporary situation of Jamaica and other Caribbean states. However the central point that emerges from this discussion is clear: there is no need to criminalize homosexuality in order to have a moral idea of the nation.

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Bibliography

Alexander, M.J. "Not just (any)body can be a citizen: the politics of law, sexuality and postcoloniality in Trinidad and Tobago and the Bahamas." In J. Weeks, J. Holland and M. Waites, (eds.), *Sexualities and Society: A Reader.* Cambridge: Polity Press, 2003, pp. 174-182.

Blake, C. and Dayle, P. "Beyond cross-cultural sensitivities: international human rights advocacy and sexuality in Jamaica." In Lennox, C. and Waites, M. (eds.), *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change.* London: School of Advanced Study, 2013, pp. 455-476.

Church of Scotland. "Church votes in favour of allowing ministers in same sex civil partnerships." May 16, 2015.

Ibid. "Assembly agrees apology to gay people and accepts same sex marriage report." May 25, 2017.

Committee on Homosexual Offences and Prostitution. *Report of the Committee on Homosexual Offences and Prostitution,* Cmnd. 247. London: HMSO, 1957.

Council of Europe. *Convention for the Protection of Human Rights and Fundamental Freedoms.* Strasbourg: Council of Europe, 1950.

Davidson, R. and Davis, G. *The Sexual State: Sexuality and Scottish Governance.* Edinburgh: Edinburgh University Press, 2012.

Gaskins, J. "'Buggery' and the Commonwealth Caribbean: a comparative examination of the Bahamas, Jamaica, and Trinidad and Tobago." In Lennox, C. and Waites, M. *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change.* London: School of Advanced Study, 2013; pp. 429-454.

Grimley, M. "Law, Morality and Secularisation: The Church of England and the Wolfenden Report, 1954-1967." *Journal of Ecclesiastical History,* Vol. 60, no.4, 2009, pp. 725-741.

Hall, S. *Selected Political Writings: The Great Moving Rights Show and Other Essays.* London: Lawrence and Wishart, 2017.

Hassan, G. "When did Scotland catch up with the swinging sixties?" *Scottish Review.* March 22, 2017.

James, C.L.R. *Beyond a Boundary: Fiftieth Anniversary Edition.* Durham: Duke University Press, 2013.

Lennox, C. and Waites, M., eds. *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change.* London: School of Advanced Study, 2013.

Meek, J. "Conversations with God: reconciling religious identities with sexual identities among gay and bisexual men in Scotland, 1950-99." In Taylor, Y. and Snowdon, R. (eds.), *Queering Religion, Religious Queers.* Routledge: London, 2014, pp. 101-116.

Meek, J. *Queer Voices in Post-War Scotland: Male Homosexuality, Religion and Society.* Houndmills: Palgrave Macmillan, 2015.

Meek, J. "Scottish churches, morality, and homosexual law reform, 1957 to 1980." *Journal of Ecclesiastical History,* 66(03), 2015, pp. 596-613.

The Commonwealth. *Charter of the Commonwealth.* 2013.

United Nations. *Universal Declaration of Human Rights.* 1948.

Waites, M. "United Kingdom: confronting criminal histories and theorising decriminalisation as citizenship and governmentality." In Lennox, C. and Waites, M. (eds.), *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change.* London: School of Advanced Study, 2013, pp. 145-181.

Weeks, J. *Coming Out: Homosexual Politics in Britain, from the Nineteenth Century to the Present.* London: Quartet Books, 1977.

Ibid. *Sex, Politics and Society: The Regulation of Sexuality since 1800.* London: Pearson, 2012.

Ecumenical and Interfaith Engagement with Sodomy Laws in India

Rev. Dr. George Zachariah

There is a misconception that homosexuality and homoeroticism are of recent origin in India. There is also a malicious campaign by the Religious Right to spread the idea that homosexuality is a western import in India. In fact, homosexuality and homoeroticism have been practiced in India from time immemorial. Homosexual activity was never condemned or criminalized in ancient India. Such activities were tolerated as long as people fulfilled the societal expectations of marriage and procreation. Ancient Indian religious traditions never condemned homosexual practices. The Kama Sutra, the ancient Sanskrit text, dwells on homoeroticism in sensual terms. The walls of the Hindu and Jain temples from the medieval era, like Khajuraho, have sculptures that depict homoeroticism. Even in Islam we find the celebration of homoeroticism in Sufi poetry, music, and literature.

This is the context in which the British came to India as part of their mission of colonial expansion. Colonialism has always been a theological project. As one colonial document categorically says, "Colonialism is not a question of interest but a question of duty. It is necessary to colonize because there is moral obligation, for both nations and individuals, to employ the strengths they have received from Providence for the general good of humanity."(See Charles Gide, *Conférence sur le devoir colonial,* 1897.)

The understanding of sexual ethics of the British colonial administration was deeply influenced by Victorian morality and its particular interpretation of Judeo-Christian scripture and theology. So, the British authorities considered tolerance towards homosexuality as a social evil, and based on heteronormative principles, they initiated stringent measures to criminalize homoeroticism as part of their mission to civilize the heathens in India.

In 1861, the British colonial administration imposed the sodomy laws in India to "purify" and "cure" the Indians of their primitive and deviant sexual practices. The British imposition of the sodomy laws in India and other colonies was a theological project as their motive was to save the people who were perishing.

We need to understand the sodomy laws as legal codes of fascism as well. section 377 of the *Indian Penal Code* provides the State with the power to intervene, invade, regulate, and monitor even the intimate spheres of human life. It sanctions a regime of imperial gaze where the people are always under the surveillance of the State. It reduces the human body and sexuality into "colonies" that can be invaded, tamed, and redeemed with the overt display of abusive power

by law enforcement officers and the judiciary, and the violent interventions by the moral policing of religious fanatics.

Section 377 enumerates that "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in this section."

There have been different initiatives, campaigns, and litigations in India to repeal this section. On July 2, 2009, in a historic verdict, the Delhi High Court repealed section 377 of the *Indian Penal Code*. According to the learned judges, "If there is one constitutional tenet that can be said to be underlying theme of the Indian Constitution, it is that of 'inclusiveness'… In our view, Indian Constitutional law does not permit the statutory criminal law to be held captive by the popular misconceptions of who the LGBTs are. It cannot be forgotten that discrimination is antithesis of equality and that it is the recognition of equality which will foster the dignity of every individual…We declare that Section 377 IPC, insofar it criminalizes consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution."

However, the Supreme Court of India, in a verdict given in 2013, set aside the verdict of the Delhi High Court. "We hold that Section 377 does not suffer from unconstitutionality and the declaration made by the High Court is legally unsustainable… However, the competent legislature shall be free to consider the desirability and propriety of deleting Section 377 from the statute book or amend it."

The Constitution Bench of the Supreme Court of India, in a recent verdict on August 24, 2017, held that "right to privacy is an intrinsic part of Right to Life and Personal Liberty under the Constitution." "Discrete and insular minorities face grave dangers of discrimination for the simple reason that their views, beliefs or way of life does not accord with the 'mainstream.' Sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual." This verdict is a great boost to the initiatives to decriminalize homoeroticism in India.

India is the cradle of several of the ancient religious traditions, and unfortunately, fundamentalist and fanatic groups now speak for these religions. Through cultural nationalism and revivalism, they misinterpret the doctrines and tenets of these religions to legitimize unjust practices of social exclusion, violence, and hatred. In contemporary India, religions play a major role in perpetuating homophobia. The responses of the leaders of various religious traditions on the wake of the Delhi High Court verdict to repeal section 377 explain this reality.

According to Baba Ramdev, a Hindu guru with large following, "The decision of the High Court, if allowed to sustain will have catastrophic effects on the moral fabric of society and will jeopardize the institution of marriage itself. This offends the structure of Indian value system, Indian culture and traditions, as derived from religious scriptures… It can be treated like any other congenital defect. Such tendencies can be treated by yoga, *pranayam* and other meditation techniques." We see similar responses from the leaders of other communities as well. For Mufti Iftikhar Ahmed, president, Jamiat Ulema, Karnataka: "This kind of thing does not happen among any creature except human beings. When human beings can differentiate right from wrong, why should humans run after such wrong things?" Harminder Singh, the general secretary of Sri Guru Singh Sabha and a prominent Sikh leader, is of the opinion that, "We the Sikhs, the followers of Guru Granth Sahib, are saying no, no and no. We are not going to allow in Sikh dharma, gay sex or gay marriage at all." Uttam Chand Bhadari, a Jain community representative, also shares a similar position: "God has made males and females for sex. Where does this new community come from? Many people don't know what gay sex is."

When it comes to the Indian Christian community, one can identify two dominant strands. Most of the Christians in India and the Indian churches consider homosexuality a sin. So they firmly believe that homosexuals should be criminalized. Many of the Church leaders issued statements expressing their concern over the Delhi High Court verdict to decriminalize homosexuality. They further demanded that section 377 should be retained in the *Indian Penal Code*. For them homosexuality is an aberration, and it can be cured through prayer and counseling.

The second position is a qualified one inspired by the "Love the sinner; Hate the sin" theology. The following statement of the Catholic Bishops' Conference of India explains this position: "The Roman Catholic Church does not approve homosexual behavior. But our stand has always been very clear. The church has no serious objection with decriminalizing homosexuality between consenting adults, the church has never considered homosexuals as criminals,"

This is the context in which the National Council of Churches in India (NCCI) took the lead in organizing programs to address this issue. Soon after the Delhi High Court verdict repealing section 377, the NCCI organized a roundtable to reflect upon the verdict theologically and biblically. The statement of the roundtable affirmed that, "We recognize that there are people with different sexual orientations. Our faith affirmation that we are created in the image of God makes it imperative on us to reject systemic and personal attitudes of homophobia against sexual minorities. We consider the Delhi High Court verdict which upholds the constitutional and human rights to privacy and a life of dignity and non-

discrimination of all citizens as a positive step. We envision Church as a sanctuary to the ostracized who thirst for understanding, friendship, love, compassion and solidarity. We appeal the churches to sojourn with sexual minorities and their families without prejudice and discrimination, to provide them ministries of love, compassionate care, and justice. We request the National Council of Churches in India and its member churches to initiate an in-depth theological study on Human Sexuality for better discernment of God's purpose for us."

In the Indian context of religious diversity, it is important to initiate interfaith coalitions to campaign against homophobia. An interfaith roundtable was organized in 2014 that brought together theologians, clerics, and practitioners of all major religious traditions in India. The statement of the interfaith roundtable affirmed that:

> *We commit ourselves to critically engage with our belief systems and practices to review and re-read scriptures and moral codes that stigmatize and demonize people who are different from us. We condemn homophobia and bigotry as morally unacceptable, and commit ourselves to eradicate this sin from our religious communities. We pledge to accompany friends who are stigmatized and criminalized due to their sexual orientations and to provide them fellowship and solidarity in their struggles to love and live with dignity. We commit ourselves to transform our worship places to welcome and provide safe spaces for sexual minorities. We discern the need to reclaim and reinterpret our traditions and rituals, festivals and feasts, scriptures and practices, to liberate our religions from the shackles of ideologies of exclusion such as patriarchy, casteism and homophobia. We dedicate ourselves to safeguard the rights of all sexual minorities and to join hands with civil society initiatives to decriminalize homosexuality and to eradicate homophobia. We call upon religious leaders to condemn homophobia and to practice non-discriminatory hiring policies in their institutions, and also to follow affirmative action to end the discrimination that transgendered people face in admissions and appointments. We affirm our resolve to work tirelessly to create a new world of compassion, justice, inclusivity and acceptance where the divine gift of sexuality will be celebrated in all diverse manifestations of affirmative love.*

The NCCI and other ecumenical movements brought out several publications during the last decade to create awareness among the congregations against homophobia and transphobia. We are committed to continuing this struggle. As

followers of the non-conformist Christ, the one who consistently quarreled with the priests of public morality, our call is to reject all laws that demonize, criminalize, and exclude human beings based on the dominant constructions of normativity and natural order.

Rev. Dr. George Zachariah serves The United Theological College, Bangalore, India, as professor and chair of the Department of Theology and Ethics. He is a member of the Mar Thoma Church, a reformed church in India with an Eastern liturgical tradition, which is in full communion with the Anglican Church. He is a member of the Task Force on Human Sexuality of the National Council of Churches in India, and is actively involved in the ecumenical campaigns to decriminalize homosexuality. He is the editor of Disruptive Faith, Inclusive Communities: Church and Homophobia *(2016).*

SECTION THREE

GENDER, HIV, AND THE CHURCH

Same-Gender Loving Women and the Church

Cynthia Ci

Gender is an issue for me in most LGBT dialogues because I feel there is a lack of attention and a lack of respect given to women.

By attention, I mean the way in which LGBTQI issues are discussed. Discussed in such a way that men dominate the argument. Now, I am aware that they dominate for a number of reasons and I am not trying to bash the male community. However, it is important to recognize that the lack of respect for women can be connected to the patriarchy and misogyny that exists in the Bible and the lack of respect that women are given in the religious texts.

I love men. I have four brothers and believe me I am not on an all-out assault with this presentation but rather using this platform to open your eyes to the disparate treatment given to same-gender loving women and women in general.

I was made to believe from a young age that I would make a good wife one day and would eventually progress into being a good mother. When my mother taught me how to cook, it was not for my own nourishment but rather for me to keep the future husband that she assumed I would marry. And when I protested because I actually don't like cooking, my mum would use scriptures to justify her arguments.

I would like to use the example of Ruth. I like Ruth. But I struggle with the story of Ruth because as much as she is celebrated in the Bible, she also reinforces the religious notion that women must have men in order to survive.

You may be wondering why this is relevant. Well, it is important because this sets the tone for some of the issues same-gender loving women face in affirming their relationships or how they identify within the wider society.

Countless times I have heard:

"I understand gay men, but how do women have sex?"

"Who's the man?"

And often the most insulting comments are "you're just playful…flirty…a freak," or the most common insult: "can I join in?"

Same-gender loving women are not taken seriously. To the extent that the lawmakers in the country of my birth, England, did not bother to make a law decriminalizing it. Neither did lesbians in England have a law regarding the age of consent. In fact, when a law did finally get passed in 2000—the *Sexual Offences (Amendment) Act*—it did not explicitly mention lesbians or same-gender loving women in the same way or context that it explicitly mentioned men.

For a long time, England did not want to admit and, in some ways, could not fathom the existence of lesbians. We were not taken seriously.

We are influenced by culture and culture, in some instances, can be defined by which religious sect you follow. My heritage is African; my parents are Nigerians and my matriarchal lineage is deeply religious.

I was born in London and my culture is British. It has Nigerian influences but it is predominately British. I only accepted I was actually British and not Nigerian two years ago. Because for many years I did not want to identify with the slavers of my tribe.

See, I grew up in the African churches of London. And anyone who's been to South London where I came from knows that, after chicken and chip shops, the next most frequent establishment you come across is churches. And in the many churches I have ventured into, I have been taught to be submissive and to play my position.

But in school and in the wider British society, my teachers were telling me I could be a leader and I could travel the world and I could do anything I want to do as long as I put my mind to it. So I grew up with this conflict as a woman.

As the first-generation offspring of migrants, I refuse to be oppressed by the same system of beliefs that would have oppressed my grandmother, preventing her from being ordained. Thus she served the church whilst her two younger brothers, my great-uncles, ascended through the church hierarchy to become leaders. So my grandmother's brothers—who, because of seniority in the context of African culture, are not allowed to call her by her name—can assume senior positions and sit higher than her within the church.

So, on the one hand I'm being oppressed and on the other hand I'm being told to reach for the stars. I felt the church was trying to tame the fire that burned in me. I wanted to lead, but I was told I couldn't lead because I'm still a single women. Once I was married, "of course we'd love to have you." And most African traditional churches do not ordain women for this reason and some of the other reasons I've already outlined.

The church has played a huge role in patriarchy and misogyny—for decades.

With women seen as not being good enough for ordination, their service in the church was reduced to being servers and deacons.

I'm no deacon. And neither are my friends. We are willing to fight tooth and nail in order not to be oppressed—to the point that we drive ourselves mad and suffer with mental illnesses, fighting the inner battle to go against everything we know and everything we have been taught about our place and role in society.

If women are made to feel unimportant or inferior in a religious context, it is no wonder these views seep through into our cultures in such a way that a woman who does not play her part according to the religious texts is invisible and a nobody.

Naomi and Ruth were nobodies until Boaz came into their lives. That's the

way I see it. Sorry if I have offended my religious leaders.

You are killing your children's talents with this way of thinking. And it's no wonder many young people are leaving the church. You have to adapt and move with the times and encourage the youth to lead regardless of gender, creed, sexuality or anything.

We cannot allow male issues to dominate the argument. Women are visible, women are here and although the laws did not criminalize us, the church and, in some ways, society have penalized us.

I'm a liberal. I'm a Christian, although many may argue that ground—but I don't care. I realized soon after I came out that I am not a Christian because it pleases you. I am a Christian because it pleases God. And only God can judge me.

I'm fierce and headstrong and I think that's because I'm British.

I want to conclude with this personal sentiment: My mother says to me all the time, "I don't think you'd be parading your lesbianism if you were born in Nigeria."

I say, "Yes, Mum, you're right. But I never made that decision. You did. God brought you here to birth me because he wanted a leader."

Cynthia Ci is a film graduate from London who believes nothing is better than serving the Lord. She first came across House of Rainbow Fellowship in 2013 while looking for a wholly accepting Christian ministry. Cynthia now serves on the board of directors. Outside the ministry, Cynthia lives a simple life, assisting her friends and family and helping the homeless projects in London.

Decriminalizing Lesbianism: A British Perspective

Philippa Drew

First, just a quick word about the Kaleidoscope Trust, of which I am a trustee. The Trust is a member of and provides the secretariat for The Commonwealth Equality Network, which is a network of 42 LGBT organizations around the Commonwealth representing 42 countries (including Jamaica). TCEN became a fully accredited Commonwealth organization in June 2017 when all the member states (including Jamaica) agreed that it met the criteria for accreditation. The Network will be advocating strongly for LGBT rights, in particular decriminalization, at the Commonwealth Heads of Government meeting to be held in London in April 2018.

Second, an equally quick word about being British. I feel that the U.K. has a special responsibility to advocate for decriminalization. As Prime Minister May said on Pride Day, July 8, this year, "Around the world cruel and discriminatory laws still exist—some of them directly based on the very laws which were repealed in this country 50 years ago. So, the U.K. has a responsibility to stand up for our values and to promote the rights of LGBT+ people internationally. That's why we will continue to stand up for human rights, directly challenging at the highest political levels governments that criminalise homosexuality or practice violence and discrimination against LGBT+ people internationally." I applaud that. But I expect more of my country. I think the British government should apologize for the criminalization of homosexuality, which they imposed on millions of people worldwide who never had such laws and which has brought uncountable misery, violence and death to millions.

I realized yesterday that I am in a minority four times over at this conference:

- As a woman
- As a non-black person
- As a lesbian
- As a non-religious person. I was brought up in the Christian faith but it left me 50 years ago.

The church's role throughout the world in relation to LGBT people is a dishonourable one. I hope that this conference and any future dialogues will lead to better understanding between all—and in particular that people of faith will support the decriminalization of homosexuality. People of faith may consider homosexuality to be a sin but that does not mean it should be a crime. Adultery is a sin but it is not a crime. If it were, there would not be nearly enough prisons in the world to accommodate all those convicted.

Lesbians suffer from the criminalization of homosexuality. As of October

2017, 72 countries still criminalize homosexuality, in one form or another. Of those countries, 44 expressly or implicitly criminalize lesbians and bisexual women. Furthermore, of the 52 countries in the Commonwealth, 36 countries criminalize homosexuality, and 16 countries (31%) specifically criminalize lesbian and bisexual women. Even where female homosexuality is not expressly criminalized, lesbians are threatened with arrest, arrested, blackmailed or subject to violence whether from their families, from members of the public or the forces of the state.

Whilst there is a general trend towards decriminalization globally, there is a converse trend towards an *increase* in criminalization of LBT women. Over the past 30 years, 45 jurisdictions have decriminalized homosexuality, either through legislative repeal or the courts. However, during that same period, at least 10 jurisdictions have amended their laws that criminalize gay and bisexual men to include LBT women. This has been achieved through the courts, by interpreting ambiguous laws as applying to women, or by governments amending legislation to use gender-neutral language, so that it applies to women as well as men.

My third point is about intersectionality. Women are "economically, socially, politically, legally and culturally disadvantaged compared with similarly situated men" throughout the world, with these disadvantages operating on multiple levels: international, regional, national, communal, and familial.

In General Recommendation 28, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) identified intersectionality as a "basic concept for understanding the scope of the general obligations of States parties" and said that:

> *The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men.*

Influenced by their religious beliefs, the families of LBT women are, in some cases, responsible for much of the violence and discrimination against them. In some cultures, the practice of "corrective rape" is used to turn LBT into "real women." A brother, uncle or other family member may undertake this practice, to "fix" the LBT woman. For example, Irina, a Russian lesbian, claimed asylum in the U.S.A. on the grounds that she had been tortured or ill-treated by a range of people, including her own family members. Irina's sisters demanded she give up custody of her son and get psychiatric treatment to "cure" her of her homosexuality. Furthermore, Irina's parents hired two investigators to probe her lifestyle. These investigators then abducted Irina, and raped her to "teach her a lesson" and

"reorient" her sexual identity.

The implication of corrective rape is that women who are not attracted to men need to be fixed by men, thus asserting the dominance of men over women's bodies. This practice highlights the interconnection between gender equality issues and the vulnerabilities women face due to their sexual orientation or gender identity.

In addition to domestic laws that criminalize same-sex conduct, other domestic laws can have a severely negative impact on the lives of LBT women. Some countries either fail to recognize rape within marriage as a crime, or explicitly exclude marital rape from criminal sanctions (e.g. Sri Lanka). Rape laws that fail to criminalize rape within marriage are harmful to all girls and women, regardless of their sexual orientation. This is especially true when women are forced into marriage against their will. This situation is even more traumatic for lesbian women, however, who will never have any sexual attraction to their husband. Such laws perpetuate the belief that "women, and particularly married women, are always available for sex—with or without their consent."

Some LBT women may become ostracized from their families as a result of the stigma associated with being LBT, stigma for which religious belief may be responsible. With limited economic opportunities, LBT women may be forced to turn to sex work, which is criminalized to some extent in 117 countries. According to Amnesty International, sex workers "are at heightened risk of a whole host of human rights abuses including rape, violence, extortion and discrimination" as a result of criminalization.

Furthermore, women who are forced into prostitution, forced to have sex within marriage, or undergo "corrective rape," may become pregnant as a result. They may not be able to obtain an abortion, if desired, as this may be illegal in many jurisdictions, again for religious reasons.

Some LBT women might be forced into a heterosexual marriage because they are economically and culturally expected to be dependent on men. The result of such a marriage is essentially a lifetime of sexual abuse. For example, a lesbian member of Gays and Lesbians in Zimbabwe reported that, when her parents discovered she was a lesbian, they forced her to live with and marry a man who they knew was consistently raping her.

LBT women in forced marriages suffer from a lack of autonomy over their reproductive health and their family planning choices. Such marriages can have a negative impact on their mental and physical health. Where LBT women are rejected by their families, on account of their sexual orientation, they experience disproportionate levels of suicide, homelessness, and food insecurity. I could say a lot more about how religious attitudes towards women and towards homosexuality combine to the detriment of LBT women.

In countries that still criminalize homosexuality, the first step towards eradicating discrimination and stigma is decriminalization. However, whilst changing the law to decriminalize homosexuality is important, LBT women's lives will not substantially change until the overwhelming family and community pressure to conform to expectations "to be a dutiful, married woman" are removed. Indeed, gender equality in religions and in society is essential if women in general and LBT women in particular are not to continue to suffer disproportionately.

I will end with my own exegesis of the Book of Ruth. Naomi is Ruth's mother-in-law. Both are widows. Naomi decides to return to her home country and tells Ruth to remain in Moab. But Ruth and Naomi are close, very close. Ruth says to Naomi, "Where you go I will go, and where you stay I will stay. Your people will be my people and your God my God. Where you die I will die, and there will I be buried." But Naomi and Ruth live in a society where it is impossible for a woman or two women living together to be economically independent. So, Ruth has to demean herself in order to find a husband so that both she and Naomi may survive. I like to think that as Boaz was a busy man, Ruth and Naomi would have had plenty of quality time together….

Philippa Drew is a Trustee of the Kaleidoscope Trust, a U.K.-based organization that works to uphold the human rights of LGBT people internationally; a Trustee of the Human Dignity Trust (U.K.), which supports legal action to decriminalize homosexuality; and a Stonewall Ambassador. From 2013 to 2016, she was Chair of the Doughty Street Group of organizations concerned with the persecution of LGBT people outside the U.K. In 2006, Philippa retired from the Foreign and Commonwealth Office as Director of Global Issues with the responsibility for human rights, climate change, sustainable development, the UN, and the Commonwealth.

Healing Our Image of God

Rev. Canon Rosie Harper

I want to start my talk by describing a particular and seminal moment. One of the things I do in my work with Bishop Alan Wilson as his chaplain is to go along to his meetings with people and make very precise notes to record exactly what is being said. This particular meeting we knew was going to be challenging because it was a safeguarding meeting.

The woman had been seriously abused by her clergy husband over many, many years. None of us had picked it up. In the parish, everyone believed his story, not her story. He told everyone that she was a drunk, that she was a difficult woman, and they all believed him and not her. In the end, she managed to escape and she moved out of the area. Then many years later, she came back saying, "You as the Church should have done better by me. You should have protected me."

We had a very long, helpful conversation. She began to talk about things she hadn't been able to for a long time and started by expressing herself in very angry terms. Gradually that calmed down into something a bit calmer, a bit deeper. As she left, although she hadn't shaken hands with anyone in the church for a long time, she shook Bishop Alan's hand. And then, in that way that usually only happens when you're leaving the doctor's office and you say the really important thing just as you're going out the door, she looked Alan in the eye and said, "Of course it was the theology that did it." And it was like this cold icicle ran down my spine and I thought, "She is right, you know."

I think most of us have had conversations about various theories of atonement and penal substitution and the violence inherent in some of that, but I think it goes further and deeper than that. I think we need, at the bottom of this entire conversation, to look for a healing of our image of God. We need to heal who we think God is.

Now, it's a fundamental tenet of our Christian faith that we do not make an idol of God. It's absolutely important that we do not make an idol of God. And when we went to God and asked, "Who are you? Describe yourself!", God actually did not say, "I am male. I am heterosexual." All God said was, "I am that I am."

Now, the trouble is that we don't have a mental, emotional, spiritual capacity to stay with that. In the end, it came such that we needed Jesus in order to say, "Maybe this is what God is like." But meanwhile we have inevitably created God in our own image. Because we have no other image and no other language available to us, the image of God that triumphs is going to be aligned to the image of

the people who have the most power. So, you see, it's all about what sort of God you believe in. In the olden days, you created a kind of feudal God. Have you noticed God was really quite like Abraham, who had his children and his wife and his slaves and his prosperity? Mostly he was benign, but that was God and that was where the power was. And you can track it through history.

The people of Israel went to God and said, "Please can we have a king?" God looked at them and said, "This is not going to end well." Nevertheless, they had a king and then, guess what, we have an image of God as the king, God who has power and authority and controls people. We have had all sorts of different models of what God might be like in the historical context. But it's always a male God. If there's one thing that gets right up the nose of my congregation back in Great Missenden in the U.K.—a nice, white, middle-class bunch of folks—it's when I refer to God as "She." Were I to refer to God as queer, all hell would break loose and yet of course we all know that God is not gendered in that way. And we come to the present day and I would suggest that in the Church of England at the moment God is rather more like a corporate CEO. Well, as you can imagine, I have my discomfort about that.

Now, the problem is multilayered. It's difficult as an individual level. When you are, as a young child, told that God is love, you believe it—especially if you are fortunate enough to be growing up in a family where love abounds and you are treated well. But then as you grow older, it's extraordinary how all sorts of caveats develop. God is love…BUT. I would suggest to you that when you qualify the love of God, you are always being idolatrous. God is not "love but"—God is love. Full stop.

When you say, "God is love, but God is just," you are saying that God is love but that God also has the capacity for anger and violence—and watch out because you'll get it if you don't obey. That's a misreading of the Bible because God's justice is not punitive justice. God's justice is the justice of equity.

So, as a little child, you grow up and gradually you learn that God is not only to be loved, but to be feared. God is not only there to love you, but to control you. And the love of God that controls you is extraordinarily like the love of the men around you, particularly the men in the church.

This works at an individual level and it hampers the growth of your spiritual life when you have a patriarchal vision of God, and a power-driven vision of God.

But it works in church structures, too, because in a church if you have a God who is essentially male, it stands to reason that the church should be run by the men. Because the men are the ones who know what to do with the power, just like God knows what to do with power. And the worst thing is that then you read the text, backfilling the power that you want from God.

So you say, "God is a just and angry God." What you actually mean when

you stand up in the pulpit and say that is, "I am an angry man." But you don't take responsibility for that anger; you blame God.

You say, "I'm really sorry, I want to be equal and fair to all the gay people in the congregation, but the Bible says God says I may not." Actually what you are saying is, "I'm a bigot, I'm a homophobe, but I'm going to blame God."

You say, "Of course we want to please women, and we want women to have equality, but actually God says we've got to keep women in their place. This is what women have to do. Look at what Paul says."

And what you are really saying is, "I want to keep women in their place, but I'm not going to own up to it; I'm going to blame God."

So that's all I've got to say today. When we create God in our own image, who will at the moment—maybe it will change—inevitably be male, we are making a terrible idolatrous mistake. Our prayer, underneath everything else that is talked about at this conference, our prayer should be that we can heal our image of God.

Rev. Canon Rosie Harper holds a Masters in Philosophy and Religion from the University of London (Heythrop College). She is now Vicar of Great Missenden and Chaplain to the Bishop of Buckingham. She is chair of the Oxford Nandyal Education Foundation, an education charity in rural India. A member of General Synod, Rosie speaks and writes extensively about theology and culture, including presentations at the Hay Book Festival and the Royal Festival Hall.

A Jamaican Perspective

Angeline Jackson

I am Angeline Jackson, and I am from Communities of Restoration, a new faith-based group, and Quality of Citizenship Jamaica, an organization that works with lesbian, bisexual, and trans women.

I am happy to be part of this esteemed panel.

I believe that Jamaica's melting pot of religion, culture, music, and pervasive, though oftentimes subtle, misogyny creates a type of homophobia unique to our island. Each of these components is connected. This plays out in several ways.

- Many Jamaicans claim Jamaica as a Christian country and as such, phrases like "the Bible says," "the pastor says," or "God says" are frequently used to justify negative attitudes and homophobia. Additionally, the passages often referred to as the clobber passages (i.e. Romans 1:26–27, Leviticus 18:22 & 20:13, and Genesis 19, better known as the story of Sodom and Gomorrah) are regularly used in anti-gay rhetoric from the political sphere to the personal sphere. As Rev. Dr. John Holder expressed in his keynote address, the Bible is often used as a yardstick by which human and moral issues are measured even for those who do not attend church.
- Jamaicans generally argue that their dislike of homosexuality is because they are culturally opposed to it. This argument is usually used in conjunction with the religious argument.
- While new recordings are not as common today, music ranging from Buju Banton's notorious "Boom Bye Bye" to T.O.K.'s "Chi Chi Man," not only express disgust at homosexuality but also serve to reinforce culturally and religiously approved attitudes.
- The misogyny that exists within our society can oftentimes be missed but is regularly displayed by men's assumption that they have the authority and right to catcall women, or dictate women's actions. Within the context of homophobia, misogyny produces the attitude that a man being gay means that he's making himself a woman, thus less than a man.

Now, while Jamaica's buggery law—or the *Offences Against the Person Act,* sections 76, 77, and 79—does not directly criminalize same-sex intimacy between women, the existence of the law creates an environment where discrimination and violence towards lesbian, bisexual women and other same-gender loving (LBSGL) women is permissible. In effect, LBSGL women are vulnerable to the homophobia, lesbophobia, and biphobia that are given licence by the statute.

In a 2014 online study, our organization, Quality of Citizenship Jamaica

(QCJ), found that 47% of respondents (lesbian and bisexual women) experienced sexual harassment, violence and threats of violence; a further 30% experienced physical violence, and threats of violence.

The 2014 IACHR (Inter-American Commission on Human Rights) Annual Report reflected the challenges and negative consequences of the buggery law on LBSGL women. The report particularly stated that many sources indicate that "corrective" rape in Jamaica is an issue of concern. We define corrective rape as the sexual violation or rape of LBSGL women with the assumption and intent that the violation will make a woman heterosexual. Some incidents noted in the report included:

- In 2007, a 17-year-old lesbian was held captive by her own mother and her pastor for 18 days and raped repeatedly, day after day, by different religious men in the attempt "to make her take men" and "live as God instructed."
- In 2008, four more cases of "corrective rape" were reported, with at least another three in 2009.
- In 2010, a lesbian woman was gang raped by four men from her community who had complained about her "butch" or "manly" attire. After she was raped, the rapists cut her with a knife "so she could better take men." A few days later, that woman's friend was abducted at knifepoint, brutally raped and then dumped half naked.

The report also noted that, in 2013, at a police station in St. Catherine Parish, a lesbian couple reported that they experienced discrimination from those charged to "serve and protect" when they went to report an incident that they had experienced. Similarly, QCJ recalled an incident that took place in October 2013 where "Kashima Talak" (name changed for security), a masculine-identified lesbian, was charged with assault causing bodily harm, although she was the person attacked and did not wound her attacker. The Independent Commission of Investigations (INDECOM) was called upon to investigate the matter, but there has been no indication it will do so.

In many cases, the women refused to go to the police because of the perceived ineffectual nature of their response. In 2012, the IACHR Report on the Situation of Human Rights in Jamaica, expressed concern of the possible reluctance of police to fully investigate crimes against LGBT people. LBSGL women are vulnerable to assaults because of their sexual orientation, gender identity and expression, and often believe they are unable to seek assistance from the police. Women would say, "How would they help when I know their response would be 'you're a lesbian, so it's not a crime to fix you.'" For the few who muster the courage to report the matter, "the police...make it clear that if (she) were dating a man this would not have happened."

Though the march towards progress is tedious, slow, and at times doesn't even look like progress, the general consensus among civil society and LGBT organizations is that there is some societal progress for LGBT Jamaicans. However, even in the face of this progress there remains significant hostility towards the LGBT community. We see the results of these attitudes in the continued reports of the violation of the rights of all LGBT Jamaicans.

Angeline Jackson is an LGBT human rights activist, HIV/AIDS educator, life coach, and co-founder and Executive Director of Quality of Citizenship Jamaica. From 2010 to 2015, she served as the associate director of Youth Guardian Services. She currently serves on the Global Advisory Board of Alturi. In 2015, former U.S. President Barack Obama recognized Angeline as one of the island's remarkable young leaders. Angeline is a three-year Fellow of the Salzburg Global LGBT Forum.

Adventism, AIDS, and Decriminalization

Dr. Keisha E. McKenzie

Some Seventh-day Adventists are doctors or clinicians and live in regions where church members have robust, public conversations about HIV and AIDS. Those Adventists might not have many questions about the church's relationship with people living with HIV and AIDS. But comments like this from one American Adventist grandmother might be more common:

> *I'm remembering the young people I went to school with in SDA schools who committed suicide. I wonder now if [church-imposed isolation] was the reason why. There was no safe place, so death was the only way out. I remember the ones in my very class who died of [AIDS]. What if their church could have embraced them? Would they have not run to a community that was rampant with the HIV virus? Would they still be alive today, finding joy in their Creator's arms and Church family? (N. Chadwick, Facebook comment, May 10, 2017)*

These are great questions.

As other papers in this forum note, the virus and complex of conditions that later became known as HIV and AIDS first broke into public health consciousness in North America in the 1970s. Researchers and advocates argue that the virus first infected humans in the 1920s, but the virus's trajectory between 1920 and the mid-1970s is unclear (AVERT, 2017).

The year many people recognize as Year 1 of the modern Western AIDS crisis is 1981, when clusters of young gay men in San Francisco and New York City began presenting with lung infections and a herpes-related tumoral cancer. That year, nearly half of the gay men diagnosed with "severe immune deficiency" died. The following summer, the condition was prematurely labeled GRID (gay-related immune deficiency), and by the fall of 1982, the U.S. Centers for Disease Control had renamed it AIDS. AIDS diagnoses were then occurring in the U.S., Haiti, Spain, France, Switzerland, the United Kingdom, and Uganda, and affecting men, women, and children regardless of sexual orientation, marital status, addiction status, or prior health. The World Health Organization began monitoring the global prevalence of AIDS in 1983 (AVERT, 2017).

During those years, while several U.S. states still maintained laws criminalizing same-sex sexuality, a small Adventist church in Southern California launched an unusual ministry to the gay community (then mostly "gay," or homosexual male). Congregants were inspired by direct interactions—personal relationships—between church members who were gay and HIV seropositive

and members who were heterosexual and presumably seronegative.

Under the direction of then-pastor Rudy Torres, and supported by each of its ministers since, Glendale City Church has nurtured a very strong collective conviction about caring for vulnerable people and intentionally welcoming non-heterosexual people. One report ties this ethic to an intimate moment in the early days of the international AIDS pandemic: when Carlos Martinez disclosed his AIDS diagnosis and sense of God's forgiveness during a Bible class at Glendale, 30 women over 65 years old responded by wrapping him up in hugs rather than in censure and condemnation (Aghajanian, 2015a).

Martinez's eventual funeral had 900 attendees, many of them from his local Adventist church (Aghajanian, 2015b). Glendale also became the first and, for a time the only, congregation in the city to hold funerals for people who had died from AIDS. Its legacy among lesbian, gay, bisexual, transgender, and intersex (LGBTI) people remains strong nearly forty years later, and the congregation today operates under the motto "Revealing Christ, Affirming All" (Glendale City Church, n.d.).

The story of Glendale, and other communities like Kansas Avenue Adventist church in Riverside, CA, which began a congregational AIDS ministry in 1996, is *not* the story of the wider Seventh-day Adventist denomination (Wright, 2008; Bull and Lockhart, 2006). The General Conference of Seventh-day Adventists monitored the epidemic through committees from 1987 onward, but did not move to actively coordinate local ministries to people living with HIV and AIDS until more than twenty years after the epidemic began in 1981 (see Lawson, 2008). By the end of the 1990s, AIDS had become the leading cause of death in Africa and the fourth-leading cause worldwide (AVERT, 2017).

It wasn't until 2002 that the General Conference Executive Committee voted to create a new program they called the Adventist AIDS International Ministry (AAIM) (Giordano & Giordano, 2016b, p. 9). AAIM's launch coincided with the launch of PEPFAR, U.S. President George W. Bush's $15 billion initiative to control HIV and AIDS, tuberculosis, and malaria worldwide, especially in countries with high prevalence rates (Kaiser Family Foundation, 2017).

Today, AAIM's mission is "to coordinate actions and resources to bring comfort, healing and hope to people infected and/or affected by HIV/AIDS, share a message of education and prevention to the general population, and present a united front in order to accomplish what our Lord Jesus Christ has commissioned each of us to do" (Giordano & Giordano, 2016a, p. 6). This ministry is in line with what Adventists traditionally call "medical missions" (cf. Nichol, 1956).

So, on behalf of the Adventist denomination, Oscar and Eugenia Giordano, a husband-and-wife team of doctors, accepted the call to lead AAIM and moved to South Africa from their hospital practice in Rwanda. From that new office,

and with the assistance of volunteer coordinators across the continent, AAIM began dismantling the lattices of public health ignorance and social stigma that undermined the church's compassionate care for people living with AIDS in sub-Saharan Africa, the region where 70% of the world's people living with HIV are located (Giordano & Giordano, 2016b; Oliver, 2013).

The Giordanos worked across the region until the four individuals who attended their first meeting became "hundreds" in search of direct service and support programs (Oliver, 2013). The ministry's network of individuals, congregations, and clinical organizations now provides skills and job training, micro-businesses such as bakeries and seamstress shops, as well as clinical services with an engagement-and-evangelism strategy rooted in concern for the Other and "loving, compassionate care" (Giordano & Giordano, 2016a, p. 3; Giordano & Giordano, 2016b, p. 9). AAIM's 10th anniversary program included a multi-national meeting of 70 people, and the church's work for people living with HIV and AIDS then spanned 26 countries.

Since the Giordanos' retirement in 2016, what is now a *56*-nation ministry has been headed by another husband-and wife team, Dr. Alexis and Nellie Llaguno. (For comparison, the U.S. government's PEPFAR operates in 60 countries on a much larger scale and with a much larger budget.) As of 2015, HIV and AIDS were no longer in the top ten global causes of death and there's no doubt that religious organizations like AAIM have contributed to that outcome (WHO, 2017).

As Deborah Birx, the U.S.'s global AIDS coordinator said at a UN prayer breakfast this year, "Faith-based organizations have been vital to the global AIDS response since the very beginning, saving and improving millions of lives. As we fast-track toward achieving epidemic control, the powerful leadership and unique reach of the faith community is as important as ever" (UNAIDS, 2017).

Among Seventh-day Adventists, that faith-based response varies by location. The Adventist Development and Relief Agency (ADRA) began single-nation HIV and AIDS programs the year after AAIM's launch, and AAIM has self-identified Adventism as "one of the most accepting and compassionate denominations" for its approach to HIV and AIDS among continental Africans (Giordano & Giordano, 2016b). AAIM was launched even before same-sex sexuality was decriminalized in the United States through the landmark Supreme Court case *Lawrence v. Texas* (2003). Yet there's no analogy to AAIM's scale of service for people with HIV and AIDS in North America, where HIV and AIDS first drew widespread public attention and where the worldwide headquarters of the Seventh-day Adventist denomination have always been located. Why not?

At least one answer is buried in phrases like "biblical principles regarding sexuality" and "God's ideal" for marriage and sexual expression, which recur throughout denominational statements on HIV and AIDS (e.g. Annual Council,

n.d.; AAIM, n.d.). In 2000, Dr. Harvey Elder, one of a few dogged advocates for faith-based, compassionate service to people living with HIV and AIDS, told an Adventist News Network reporter that part of the church's sloth and ambivalence on this issue was the perception that the disease is a moral penalty. "AIDS is generally perceived as a 'dirty, messy' business, which involves individuals who are 'not our kind of people,'" he said (Krause, 2000). To be clear, Dr. Elder did not himself advance that view, but a number of prominent Adventist leaders did and still do (cf. Lawson, 2008; Ferguson, 2010).

For example, in his 2008 book, *The Cross of Christ,* historian and practical theologian Dr. George R. Knight writes pointedly about sin's consequences as expressing divine anger.

> *The concept of God's impersonal wrath does, it seems, have an element of truth in it. God does "give up" lawbreakers of physical and moral laws to the results of their actions. Thus habitual liars create distrust toward them, and sexual profligates risk the possibility of developing AIDS. (Knight, 2008, p. 41)*

Presumably, if someone set fire to their home and ended up trapped inside, it would not interfere with the wrath of God to call the fire department and try to drag them out. After the fire had been extinguished, perhaps, investigators might explore causes and culpability, not with the sole intent of assigning blame, but perhaps also to assess future risk and mitigate it with, say, sprinklers or training. When applied to people deemed "sexual profligates," however, the divine judgment theology that Knight proposed wouldn't even inspire a call to first responders.

Yet Knight's comments contradict the denomination's own guidelines on HIV and AIDS. According to the General Conference Executive Committee's June 1990 statement, Adventists are to "separate the disease from the issue of morality, demonstrating a compassionate, positive attitude toward persons with AIDS, offering acceptance and love, and providing for their physical and spiritual needs" (General Conference, 1990; cf. Guy, 1987). The nonjudgmental compassion recommended in that statement is the attitude that Dr. Elder and his colleague Dr. Gary Hopkins brought to health and HIV and AIDS advocacy within the Adventist global community. A theology of engaged compassion, not passive wrath, was what inspired both the 2000 study committee and the formation of AAIM a few years later. Dr. Hopkins framed his position in terms of Christian moral ethics and the church learning to imitate Christ in its dealings with the vulnerable. "AIDS is the leprosy of today," he told ANN. "And where we have tended to step back, Jesus would be stepping forward" (Krause, 2000).

Dr. Allan Handysides, a Maryland-based gynecologist who did double duty in the General Conference of Seventh-day Adventists' Adventist Health Minis-

tries department, advocated for "stepping forward" into the compassionate care of sick people regardless of their conditions for his entire career; his Health Ministries department successor, Dr. Peter Landless, participated in the General Conference's 2014 conference on gender and sexuality, "In God's Image," which included presumptively heterosexual theologians, clinicians, and other church workers discussing the identities, experiences, and relationships of LGBTI people (Adventist Review/ANN Staff, 2014; ANN Staff, 2013). While Landless was one of the few presenters whose summit presentation was summarized in the official church paper, Handysides has been credited with prompting General Conference officials to dedicate attention to the HIV and AIDS pandemic across Africa (Giordano & Giordano, 2016b).

Sadly, the clinicians' ethic of care came decades too late for a generation of gay Seventh-day Adventists isolated by their church's moral condemnation and then decimated by the first twenty years of the AIDS epidemic in the United States. For many survivors, that period holds deeply traumatic memories of burying friends and nursing others while dealing with a "repelling, rejecting, and—to say the least—avoidant denomination" (McKenzie, 2016). After reviewing perhaps the only AIDS quilt in the world to memorialize Seventh-day Adventists last year, I wrote, "When the church wasn't 'family' for them, they were family for each other" (*ibid;* see also Elliott, 2015). That generation of LGBTI Adventists suffered immensely and unnecessarily when church leaders' opinions about their sexual orientation meant that a deepening public health crisis remained off the denomination's mission targets and hundreds of thousands of deaths in the Global North exploded into millions worldwide.

A second answer to the question of selective Adventist responsiveness to people living with HIV and AIDS is related to the denomination's evolving membership demographics. In 1981, when the U.S. crisis began, the North American Division (NAD) had almost 623,000 members. Today, its 1.2 million members represent just 6% of the global Adventist population. By contrast, more than *45%* of the new Adventists who joined the church last year did so in divisions that serve sub-Saharan Africa (West-Central Africa [WAD], East-Central Africa [EAD], and Southern Africa-Indian Ocean [SID]). These regions of the world church hold almost 8 million members and are growing exponentially (Office of Archives, Statistics, and Research, 2017; Office of Archives, Statistics, and Research, n.d.). [Note: church divisions were reorganized in 2003 and current statistical reports do not allow for direct division-to-division membership comparisons prior to that year.]

Back in 1995, however, when Dr. Elder addressed the San Diego Adventist Forum with the startling title "The Seventh-day Adventist Church has AIDS," he made this assessment:

> *In countries where the Seventh-day Adventist Church has the most baptisms, this epidemic is exploding. Many young church workers are brands, plucked for the burning, individuals who had high risk behaviors. They near readiness for ordination toward the end of the latency of their HIV infection! For many, ordination and AIDS will occur the same year. (Elder, 1995)*

In regions where the denomination faced both exponential growth and an expanding pandemic among new members, women, and children, its medical missions heritage has kicked in, and it has found the motivation to act in the name of public health and the wholeness of humankind. Church medics in Lesotho have centered in their ministry's communications a statement that church co-founder Ellen G. White made in 1901: "Medical missionary work brings to humanity the gospel of release from suffering… It is the pioneer work of the gospel. It is the gospel practiced, the compassion of Christ revealed" (White, Maluti Adventist Hospital, n.d.). Their ministry is explicitly theologized, and not simply an expression or extension of their professional medical ethics.

But the "release from suffering" they are motivated to offer patients in Africa does not motivate comparable engagement with LGBTI people living with HIV and AIDS in the Global North. Sociologist Ronald Lawson has very thoroughly outlined this contrast in a book chapter on a church that, in his words, "has proven itself more concerned with rules and image than with the needs of its people" and has been "neither welcoming nor caring" to LGBTI people living with HIV and AIDS in the Global North (2008, p. 3–65). Moral disgust such as that quoted from George Knight blocks even medical missions incredibly well (McKenzie, 2015).

As Richard Beck explains in his book *Unclean: Meditations on Purity, Hospitality, and Mortality,* "Whenever the church speaks of love or holiness, the psychology of disgust is present and operative, often affecting the experience of the church in ways that lead to befuddlement, conflict, and missional failure" (p. 90).

This fall, the president of the Christian NGO World Relief asked, "Can you imagine the day when the chapter on AIDS is closed and a new chapter is written?" (UNAIDS, 2017).

I can. And I wonder if the Seventh-day Adventist Church will dare to imagine it, too—not just in regions where the majority of seropositive people are heterosexual, but also in parts of the world where LGBT+ youth and adults can slide into church pews beside graceful grandmothers and disclose their experience, their trust in God, and their faith in the kind of spiritual community that heals.

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for justice. Born to Jamaican parents in the U.K., Keisha studied at Northern Caribbean University. She is the founder of McKenzie Consulting Group, a communication, strategy and social good firm, and has served on the board of Seventh-day Adventist Kinship International, the peer support group for current and former LGBTQIA Seventh-day Adventists and allies.

References

Aghajanian, L. "Intersections: How a church became a beacon of acceptance." *Glendale News-Press.* June 24, 2015.

Ibid. "Intersections: A church in Glendale stands out for its inclusiveness." *Glendale News-Press*. July 8, 2015.

Adventist AIDS International Ministry [AAIM]. (n.d.). "Adventist official guidelines on HIV/AIDS, STIs, and the use of condoms."

Adventist Review/ANN Staff. "Landless calls for Compassion, Regardless of Cause." *Adventist Review Online.* March 20, 2014.

ANN Staff. "Landless director-elect of Adventist Church's Health Ministries department." Adventist News Network. April 14, 2013.

Annual Council. (n.d.) "The Seventh-day Adventist Church and the AIDS epidemic- Guidelines."

AVERT. "History of HIV and AIDS overview." August 29, 2017.

Beck, R. *Unclean: Meditations on Purity, Hospitality, and Mortality.* Eugene, OR : Wipf and Stock, 2009.

Bull, M. & Lockhart, K. *Seeking a sanctuary: Seventh-day Adventism and the American Dream.* Bloomington, IN: Indiana UP, 2006.

Chadwick, N. "I'm remembering the young people…" Facebook.com, May 10, 2017.

Elder, H. "The Seventh-day Adventist Church has AIDS!" Presented to the San Diego Adventist Forum, 1995.

Elliott, Y. "From the President's Desk." *Connection: The Newsletter of Seventh-day Adventist Kinship International,* 39(1): 1, January 2015.

Ferguson, D. "Kinship expresses appreciation to church leaders." *Spectrum Magazine.* January 14, 2010.

General Conference of Seventh-day Adventists. "AIDS - A Seventh-day Adventist Response." June 28, 1990.

Ibid. "Statement on AIDS." July 5, 1990.

Giordano, O. and Giordano, E. "HIV & AIDS inside and outside the church: Mission accomplished? The HIV epidemic and the mission of the Seventh-day Adventist Church." Plenary presentation at Health Ministries Global Advisory. March 15, 2016.

Ibid. "HIV/AIDS 'A Journey of Hope.'" AAIM Report of Activities, April 10, 2016.

Glendale City Church. (n.d.) About Us. Available at http://glendalecitychurch.org/about-us/

Guy, F. *Kinship Connection,* 11(1): 3, 5. November 1987.

The Henry J. Kaiser Family Foundation. "Global Health Policy: The U.S. President's Emergency Plan for AIDS Relief (PEPFAR)." August 8, 2017.

Knight, G. *The Cross of Christ: Christ's Work for Us.* Hagerstown: Review and Herald Publishing, 2008.

Krause, B. "'AIDS is everyone's problem:' Adventist Church establishes new AIDS committee." News.Adventist.org, October 30, 2000.

Lawson, R. "The caring, welcoming church? The Seventh-day Adventist church and its homosexual members." In Ferguson, D., Guy, F., and Larson, D. (eds.), *Christianity and homosexuality: Some Seventh-day Adventist perspectives.* Roseville, CA: Adventist Forum, 2008, pp. Part 3-29 - Part 3-74.

Maluti Adventist Hospital. Homepage. Available at http://malutisdahospital.org.ls/

McKenzie, K. "Summer reading group: Sex and privy." *Spectrum.* October 12, 2015.

Ibid. "Family memories." Blog post, *McKenzie Consulting Group.* July 26, 2016.

Nichol, F.D. "Why Seventh-day Adventists conduct a medical program." *Ministry.* May 1956.

Office of Archives, Statistics, and Research, Seventh-day Adventist Church. *2017 Annual Statistical Report.*

Ibid. North American Division (Internal), Yearly Statistics (1981-2016).

Oliver, A. "Decade after HIV/AIDS ministry launched, major reduction of stigma, increased support." *Adventist News Network.* September 30, 2013.

UNAIDS. "Faith on the fast-track for children." UNAIDS.org, September 14, 2017.

United States President's Emergency Plan for AIDS Relief [PEPFAR]. About us. Available at www.pepfar.gov/about/270968.htm

World Health Organization. "The top 10 causes of death: Fact sheet." January 2017.

Wright, J. "Adventists address AIDS pandemic." *Spectrum.* December 3, 2008.

SECTION FOUR

AFTERWORDS

Afterword

Pan Caribbean Partnership Against HIV and AIDS

The Pan Caribbean Partnership Against HIV and AIDS (PANCAP) welcomes this groundbreaking international conference on the role of the church (past, present, and future) in the decriminalization of private, consensual same-gender intimacy.

This conference comes at a time when the phased implementation of the PANCAP Justice for All (JFA) Programme, initiated in 2013, has been and continues to be the subject of discussion among parliamentarians, faith leaders, youth, and civil society. The JFA Roadmap, which is aligned to the 2016 United Nations High-Level Meeting Political Declaration: On the Fast-Track to Accelerate the Fight against HIV and to End the AIDS Epidemic by 2030, provides the frame of reference for the region's response to stigma and discrimination. The JFA Roadmap includes among its 15 actionable recommendations sexual and reproductive health and rights, gender equality with special attention to reducing violence against women and girls with the support of men and boys, and the reduction and abolition of punitive laws that contribute to the persistence of HIV-associated stigma and discrimination toward persons living with HIV, men who have sex with men, and sex workers.

The PANCAP Regional Consultation of Religious Leaders, convened in Port of Spain, Republic of Trinidad and Tobago, on February 1–2, 2017, brought together 55 Religious Leaders from 14 Caribbean countries, representing Christian, Muslim, Hindu, Baha'i, and Voodoo religions. It was coordinated by the Planning Committee of Religious Leaders and PANCAP and focused on the theme *Religious Leaders' Contribution to the End of AIDS by 2030.* Among the 10 recommendations that emanated from the consultation was for faith leaders to explore the short- and medium-term actionable recommendations of the JFA Roadmap. The main focus was to enable religious groups and organizations to effectively address the gaps in prevention and treatment interventions and continue constructive dialogue on "how to proceed with those elements yet to be resolved." Among those elements yet to be resolved is the abolition of punitive laws that criminalize private, consensual same-gender intimacy. The establishment of national faith leaders' networks in eight countries that so far have held follow-up consultations to the regional forum is an indication of the general commitment of faith leaders to contribute to the end of AIDS.

In his keynote address to the Regional Consultation of Faith Leaders, Professor Clive Landis of the University of the West Indies contended that the scientific developments have led to the conclusion that antiretroviral therapy

(ART) delivers a life-saving benefit to persons living with HIV by abolishing end-stage AIDS. But the power of ART extends to a public prevention benefit as well. "Treatment as Prevention" is the scientific breakthrough of the decade showing that persons living with HIV who achieve viral suppression on ART are non-infectious. Hence, an important avenue to ending AIDS is removing societal barriers that stand between persons living with HIV and effective ART treatment. Everyone, including the faith community, therefore has a rational self-interest in eliminating stigma and discrimination in order to create a supportive environment where people feel secure enough to know their status, to access ART medication, and to achieve viral suppression. These attitudes will have the effect of lowering HIV viral load in the population and hence limit HIV transmission in society.

This conference provides a unique opportunity to bring together church leadership to engage in respectful dialogue on anti-sodomy laws across the Commonwealth in the context of England's repeal of these laws 50 years ago. We are aware that while there is common agreement on church doctrine, there are varied positions on repealing or retaining the sodomy laws. We therefore urge participants to use the conference to engage in constructive and practical discussions on how the church as a collective can sustain the dialogue required for resolving this issue.

The Pan Caribbean Partnership Against HIV and AIDS is a Caribbean regional partnership of governments, regional civil society organizations, regional institutions and organizations, bilateral and multilateral agencies, and contributing donor partners. It was established by a Declaration of CARICOM Heads of Government in 2001 in response to the threat of HIV to sustainable human development.

Afterword

David Walker, Bishop of Manchester

Look down as you turn between the restaurants and shops of Deansgate to enter Church House, the offices of the Bishop and Diocese of Manchester, and you will see that one of the paving stones is rainbow coloured. Look up, and to the side of the door, you will see a brown plaque commemorating the foundation of the movement that led to the 1967 decriminalization of sex between men over the age of 21. It was my privilege to take part in the ceremonies to dedicate this memorial in 2014, on the 50th anniversary of the forming of a local committee for the Northwest of England. This group rapidly grew into the Campaign for Homosexual Equality, which led the battle to achieve decriminalization.

The move for decriminalization was widely supported by the Church of England bishops and archbishops of the day, but none more so than Ted Wickham, then Bishop of Middleton, one of the suffragan bishop posts within the Diocese of Manchester. Ted was an extraordinary pioneer for the mission of the church in reaching men in the reality of their lives. In 1950s Sheffield, struck by the limited engagement of the church with the working class men who had returned from the battlefields of the Second World War, he founded the Industrial Mission movement, which provided chaplaincy in factories, mines, and other workplaces. His chaplains—of whom, after his time, I was one—soon discovered the link between pastoral care and the demands of social justice.

Wickham's personal contribution, and the wider role of bishops in the House of Lords and beyond, to supporting decriminalization, owed much to the Church of England's particular role as the Established Church. In the 1940s, Archbishop William Temple, who served successively as Bishop of Manchester and Archbishop of York before being appointed to Canterbury, coined the phrase that the church is "the only organisation that exists primarily for the benefit of those who are not its members." Temple argued that were social justice and the saving of souls ever to be in conflict then the latter must prevail, but, he went on to say, such conflict should never in practice arise. The work of saving souls and of improving the conditions of human life are part and parcel of the same mission. Temple's collaboration with the Labour politician Beveridge led directly to the formation of the post-war welfare state with universal free healthcare and state support for the sick and unemployed.

Consistent with Temple's phrase, every priest licenced or instituted to a parish or benefice in the Church of England shares with their bishop in the "cure of souls" of all those who reside in or belong to their parishes. Clergy have a responsibility not merely for the nurturing and well-being of those who come to church,

or who profess themselves to be Christians, but for all who live in their patch. In the campaign for decriminalization this meant that church people could make a distinction between whether homosexual acts were consistent with Christian teaching and whether they should be illegal. Bishops in the 1960s may have held widely differing views as to whether homosexual activity was or was not always a sin, but many of them could agree that this was no longer a matter for the criminal law to regulate. The well-being of society would be served better by releasing gay men from the fear of prosecution. The Church of England might continue, and indeed it does to this day, to struggle with questions of morality in relation to same-sex relationships, but henceforth it was to be a matter for the Church and its teaching, not for the criminal courts. Following the decriminalization of male homosexual acts in 1967 (sex between adult women had never been illegal in England), later legislation saw the age of consent for such acts lowered from 21 to 18 and then subsequently harmonized with the age of heterosexual consent at 16.

Formal recognition of same-sex relationships took place in 2005 with the advent of civil partnerships; this was followed in 2014 with the extension of civil marriage to same-sex couples. These most recent changes fall far beyond the scope of decriminalization, and have taken place against a background of concern, particularly with regard to marriage, from religious leaders including some within the Church of England. Undoubtedly, decriminalization paved the way for these later changes, and the formal support for same-sex relationships offered through partnership and marriage ceremonies has played a major role in liberalizing attitudes both in the church and in wider society.

Both the Archbishop of Canterbury and the Archbishop of York have made public their opposition to the criminalization of homosexuality, and have corresponded in that regard with the leaders of those Anglican Communion provinces who continue to oppose decriminalization or who support secular campaigns to strengthen criminal penalties. The small number of English Anglicans who continue to support the retention or strengthening of criminal sanctions in other parts of the world may be motivated more by the concern that decriminalization is the first step along a road towards acceptance and inclusion, in church as well as elsewhere, rather than a belief that civil society should use the system of criminal law to uphold distinctive elements of Christian moral teaching.

Fifty years on from when Bishop Wickham's committee led to decriminalization, many churches, especially in large cities such as Manchester, take an inclusive attitude towards same-sex relationships. LGBT Christians, lay and ordained, play important roles in the mission and ministry of their churches. After the retirement of my predecessor in 2013, it was appropriate that the diocese in which the decriminalization campaign had begun should be the first to produce and make public a person specification requiring the next appointee to be some-

one who would have the confidence of, among others, the LGBT communities of the diocese.

Rt. Rev. Dr. David Walker has been Bishop of Manchester since 2013.

Afterword

Elizabeth Barker, Baroness Barker

"Religion without humanity is very poor human stuff."–*Sojourner Truth*

Every journey starts with one simple step. Throughout history, the attainment of human dignity and social enlightenment has been achieved when politicians and people of faith have become a joint force for good. The abolition of slavery and the emancipation of women are but two examples of great achievements.

The equality that LGBT+ people in the U.K. enjoy today exists because many years ago pioneers found the courage to debate and discuss fears and experiences with opponents who did not understand. Eventually hope triumphed, and *everyone* benefited. We were once where you are now and we stand ready to support you as you draw a roadmap to a confident, inclusive Jamaica.

Have faith, hold your conviction, and good will prevail.

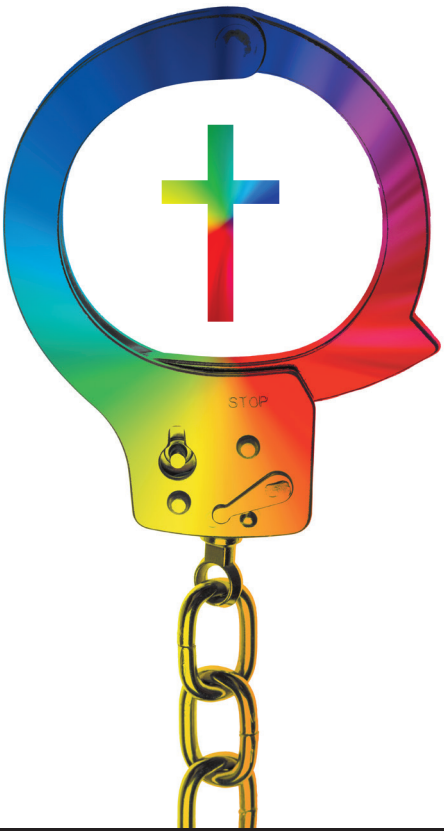
Baroness Barker is a member of the U.K. House of Lords.

In October 2017, The Canadian HIV/AIDS Legal Network and Anglicans for Decriminalization hosted a two-day conference examining the role of the Church in anti-sodomy laws across the Commonwealth. The conference, Intimate Conviction, was a groundbreaking gathering that brought together activists, church officials, and politicians from around the world for an inspiring discussion.

Now, to mark the one-year anniversary of this event, we are pleased to offer this edited volume containing many of the presentations from this conference. We hope this will be a valuable resource for anyone looking for tools to understand how these laws came to be and what role the Church can still play.

Canadian HIV/AIDS Legal Network | Réseau juridique canadien VIH/sida

INTIMATE CONVICTION 2



CONTINUING THE DECRIMINALIZATION DIALOGUE

HIV LEGAL NETWORK

Intimate Conviction 2: Continuing the Decriminalization Dialogue was originally intended to be an in-person conference held in Barbados. When the scope of the COVID-19 pandemic made it clear that international travel and close quarters would be off the table, the decision was made to move the conference online and preserve this important conversation. We would like to extend our warm thanks to our Barbadian friends and colleagues who worked so hard to make this conference a reality, no matter what the format. Special thanks go to Fr. Clifford Hall, host pastor, for welcoming us all as his virtual flock, and to Alexa Hoffmann for her dedication to seeing this conference go forward.

INTIMATE CONVICTION 2

CONTINUING THE DECRIMINALIZATION DIALOGUE

HIV LEGAL NETWORK

The information contained in this publication is information about the law, but it is not legal advice. For legal advice, please contact a lawyer.

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About the HIV Legal Network

The HIV Legal Network (www.hivlegalnetwork.ca) promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization.

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In addition to all the Conference speakers, we wish to thank the following people and organizations for their contributions to the conference and/or edited volume:

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Introduction

Maurice Tomlinson

In 2017, the HIV Legal Network (then the Canadian HIV/ AIDS Legal Network) and Anglicans for Decriminalization hosted a two-day conference examining the role of the Church in anti-sodomy laws across the Commonwealth. That conference, *Intimate Conviction,* brought together academics, activists, church officials and politicians from around the world for an inspired conversation. The conference was extremely well received and resulted in the publication of a volume of essays that has since been distributed to lawmakers across the Caribbean region.

But as remarkable as that first conference was, we had the feeling that there was still work to be done. There were more perspectives to be shared and other regions of the world to be considered. We needed to continue to the conversation. And so we began to plan *Intimate Conviction 2: Continuing the Decriminalization Dialogue.* Originally conceived as another in-person conference, the gathering moved to Zoom once the scope of the COVID-19 pandemic became clear. Over the course of three half days, we welcome more than 30 expert speakers who shared their knowledge and experience with guests who logged in from around the world. This second volume is a selection of those presentations.

The criminalization of same-sex intimacy still exists in nearly 70 countries. Many of these countries justify these homophobic laws by using Church teachings and biblical interpretations. Many of these laws in Commonwealth countries also date back to colonial times, bringing another layer of complexity. These two conferences and publications aim to break down these justifications by showing that they are built on a faulty foundation. Homophobia and anti-gay laws have no true basis in theology and religion should never be used to justify hate. By bringing these speakers together and by publishing their words, we hope to continue to make change around the world.

Maurice Tomlinson
LGBTQ Rights Consultant with the HIV Legal Network
and conference organizer

Foreword

Winnie Varghese

Dear Friends,

It is an honor for me to offer something at the beginning of this important volume. Thank you, Maurice and Sean, for your prophetic leadership.

Strangely enough for religious people, ultimately it is the civil law that tells most of us who we are and what is possible in our lives. If we are not very intentional, society tells the church what work its theology is allowed to do. What does it mean to a teenager living in the city's drainage system or on the fringes of a village that God's love is for them? What are we doing when we say that the glory of the cosmos is present in their very flesh, as the law names them as criminals. What does it mean when the church says your lives and family are just slightly less valuable or legitimate than others in our church, even if the law says otherwise. We have to get this right in both arenas. A body does not survive on poetry. The mind and heart struggle to imagine what has not been seen.

The work of Intimate Conviction is so important. The requirements of human rights law from the international community for full inclusion and more. Theological frameworks and approaches to the Bible that celebrate rather than condemn a diversity of sexual and gender expressions and more. Personal stories that demonstrate what the current situation does to fragile, human flesh. While the legal, pastoral, and theological work is so very important within the disciplines that must be reformed towards more justice and inclusion, I wonder if the most profound work that Maurice and Sean and their co-conspirators have taken on is the work of making visible new futures, equipping imaginations to dream.

In my life, the Rev. Dr. Pauli Murray and W. H. Auden are among those influences. Pauli Murray was a gender queer, Black, Episcopal priest. We don't know how she would have defined her gender given the opportunities today, but in her time, she was the first Black woman ordained, the year after women could be ordained in the Episcopal Church. Her biographers write that the vocation of priest was her true vocation. She was also a lawyer, and renowned for her work on U.S. civil rights cases and in the first years of independent Ghana. She generated the thesis that won the *Brown v. Board of Education* case, which declared the segregation of American schools unconstitutional. Desegregation, while not yet achieved, defines a new America, one in which equal opportunity is afforded to all who live in this land. So far beyond the imagination of most Americans today. How did she do that? How did she live her truth as a queer woman, here in New York, write poetry and her own story, a story it took a leap of imagination to know to tell. A story of a family, white and Black, slave owner and slave, creatively

adapting to support one another. There were no stories like that when she wrote *Proud Shoes* and became a celebrity in the 1950s. My guess is it had something to do with the church, which was also profoundly prejudiced in her time. She was the first woman on the vestry of a church I once served, and she could see and name the complexity of her existence, including in her racial identity. A remarkable legal and theological imagination fueled by her faith.

In that same church in the East Village here in New York, into which the poet W. H. Auden used to shuffle on Sunday mornings in his house slippers — I found a copy of a letter he once sent to the rector asking why the altar clothes were gone. The church was famous for its liturgical innovations. The letter was furious and, of course, beautifully written. He concluded with something like "unless of course you've sold them all and given the money to the poor." That would be just fine.

Auden lived out loud his entire life, especially in those days in New York, befriending Dorothy Day of the Catholic Worker Movement, and all of those great utopians, who believed it was important to imagine a just and beautiful future, for all of us, and to fight for it. What is left to us is their poetry. What the writers you are about to read in this book offer is the scaffolding for the poetry of a future. A future for all of us. One that wrestles with colonial and cultural legacies to imagine a future more beautiful than has ever been. A future that loves freedom. A future in which no is cast out in the name of God.

The Rev. Winnie Varghese
Trinity Church Wall Street

Keynote Address: How the Roman Catholic Church in Guyana and/or the Caribbean Views the Anti-Sodomy Law

Bishop Francis Alleyne

Thank you for the invitation and for the material that was presented at the last Intimate Conviction conference. I found the material very helpful, informative, insightful and valuable for ongoing conversation and dialogue. Bishop Terry Brown, in his presentation, said something that resonated with me: "No other language was available and fear was still the norm." Limited language and fear. Having read the presentations from the last conference, I came away with a bigger vocabulary and with somewhat less fear. Thank you for those presentations. As I attempt to offer the Catholic perspective, I do so not to make a decree or any pronouncements, even though our long-established doctrine sometimes carries that tone, but with the hope of offering something to an important dialogue, something that can be freeing and life-giving and hopefully add to the vocabulary.

The Roman Catholic Church is organized into conferences of bishops and dioceses. In our region, there are 19 English-, French- and Dutch-speaking dioceses that make up the Antilles Episcopal Conference (Appendix I). The Catholic presence in the region varies considerably from diocese to diocese, suggesting varying levels of influence that the Church may have in different territories. The anti-sodomy laws at present apply to nine countries, or 11 dioceses, in the region: Antigua and Barbuda, Dominica, Grenada, Guyana, Jamaica (3 dioceses), St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Barbados.

In 2001, the bishops of the Antilles published a document titled "Statement on Homosexuality and Homosexual Behavior" (Appendix II). The opening paragraph states:

> *The contemporary political pressures to change legislation in order to decriminalize consensual homosexual activity are now present in the Caribbean Region. The discussions, already quite emotional, have raised two major issues for the Catholic Church. The first issue is that the people must understand the doctrinal/moral teaching of the Church on homosexuality. The second issue is that, in the context of the discussion to change legislation, the teaching of the Catholic Church on homosexuality must be communicated clearly, accurately and continually by the Church to the Caribbean Region.*

The topic was sufficiently present in the region in 2001 to evoke a statement from the bishops. In essence, it states that sexual activity outside of the male-female covenantal relationship for the purpose of procreation is disordered and

morally wrong. The statement does not express whether the law should be removed from the books but cites a communication of Church teaching, which says:

> *No matter how the debate on decriminalizing adult consensual homosexual activity ends, the teaching of the Church will remain unchanged and the pastoral outreach of the Church will continue to manifest the reconciling love of the Lord.*

As is often the case when a subject of such an organic nature comes under review, there is a tension between the established doctrine or teaching and pastoral concerns. There is a body of official teachings on one hand and real people on the ground on the other. The bishops, in their 2001 statement, declared:

> *While the Church is obliged to preach the truth, it is also obliged by the love of Christ to provide quality pastoral care to persons who have a homosexual orientation and who may be struggling with homosexual behavior.*

In 2015, the bishops of the Antilles issued a statement entitled "Marriage: A Covenant between a Man and a Woman" (Appendix III). At that time, there was discussion and debate in the region about the legal recognition of same-sex marriage. In many of our dioceses, priests are licensed by the state to register marriages, and there was some speculation that should it come about that same-sex unions would be granted legal recognition then marriage officers of the state may be required to comply. But that is another matter, which has its own doctrinal, legal and pastoral tension. In the bishops' 2015 statement, reference is made to the decriminalization of the anti-buggery law:

> *Respect for others, however, does not imply approval of the life styles contrary to the traditional ones, even if and when the State were to decriminalise the anti-buggery law, always bearing in mind that legality does not make a thing moral. Our duty, under all circumstances, is to express love and concern as we remain firm in the faith of our Fathers fostered and maintained by God's Holy Spirit.*

In my conversations with individual bishops, I gleaned that decriminalization is not a front-burner issue for them in their respective territories, but generally they would have no objection having these laws removed from the books.

In Guyana, the existing laws, as I have come to understand them, are seldom invoked, and when they are, it is often by law enforcers who intend to victimize members of the LGBTQ community. Having listened to the reports of discrimination and sought advice on the scope of these laws, I have no doubt that these laws in Guyana should be made null and void.

That, in short, is what I see to be the present disposition of the Roman Catholic Church in the region and in Guyana. What I would like to share in this pre-

sentation are my views on some possible pastoral initiatives that would better dispose and equip people to process ideas surrounding this particular topic and other controversial and emotional topics in general.

In 2013, the Caribbean Development Research Services Inc. (CADRES) prepared a report titled "Attitudes toward Homosexuals in Guyana." I judged this initiative to be very helpful in that it put some specifics on the table. It moved the conversation from vague assertions and generalizations to naming the attitudes, giving some clarity as to how prevalent they were and the groups or areas where they originated or were promulgated. Given that there have been violent outbursts against the LGBTQ community in Guyana, one may be left with the impression that there was a high level of phobia — and the report did find very strong views against homosexuals, with survey respondents stating that they should be severely condemned, beaten, imprisoned and even hanged. The study also revealed that, in fact, there was a high percentage of respondents who expressed tolerance and acceptance. When people were polled about the anti-sodomy laws, many did not know of them, and when these were explained, they thought that the laws were illogical.

There are two things I wish to infer from the report. One is the evidence that even among those who may have been generally dismissive and even condemnatory of homosexuals, when asked their views "if the person was a member of family, a friend or colleague at work," the responses weighed much more on the side of compassion and acceptance. Here is an invitation to pastoral outreach: we belong to each other; every person is endowed with dignity and worth, deserving of utmost respect. In his most recent encyclical *Fratelli tutti,* Pope Francis articulates the belonging and the fuller expressions of life we are called to celebrate when we build communion. He makes reference to the global efforts of integration among the United Nations and the European Union, and similar efforts in Latin America. And we can think of our own Caribbean Community (CARICOM). On the pastoral level, which I believe would go a long way, the faith bodies would create the spaces where people could celebrate their common humanity.

I call to mind an account given to me by an elderly soul, a good Catholic, well-cued into the Church's teachings, who estranged herself from her nephew because he was gay. One day she was informed that her nephew was dying of AIDS-related causes. After some struggle between her loyalty to her understanding of Church teachings and her loyalty to family, she went to visit her nephew. When she met her nephew's friends and saw the manner in which they were looking after him, she came away with a very different disposition towards her nephew and his companions. This account is an example of a person's "vocabulary" increasing while putting fears to rest.

The other reference from the report that I want to draw on is the mention that was made of a connection between religious groups and the expressions of antipathy, intolerance and condemnation.

Another story. A few years ago, I sat with other religious leaders in a consultation conducted by the Ministry of Education on corporal punishment. The dominant contributions to the consultation were passionate quotes from the various holy books that beatings and chastisement or the rod or whip were necessary components in the formation of the human being. The contributors further testified how much they benefited from being on the receiving end of such treatment and thus strongly advised that corporal punishment be kept in schools. It made me wonder what happens in our homes. Corporal punishment is formation by fear. So often the default response to a topic is to find a scriptural reference that says something about that topic and quote it authoritatively: the Bible says, or according to St. Paul, Moses, the Book of Leviticus, Sodom and Gomorrah. In doing so, we hide behind texts, we sidestep our responsibility to real people in real circumstances in real time. While I have gone off topic in mentioning corporal punishment, I am referencing a similar manner of response to a controversial subject from religious bodies. If we are going to draw on the texts of scripture, certainly from the point of view of Christianity, texts, particularly the Gospels, are there to challenge and push back boundaries to promote life and open ways and possibilities for all peoples to attain a fuller stature. At the heart of Christianity is the teaching that we form and nurture life and relationship through love. In the words of St. John: "In love there is no room for fear, but perfect love drives out fear, because fear implies punishment and no one who is afraid has come to perfection in love" (1Jn 4:18). I believe that the scriptures of other faith traditions would offer similar counsel as would the more modern insights of the behavioural sciences. These texts are sometimes avoided as the way of love asks much more of us; it requires us to accompany, to walk with others and discover their gifts with them, to be available to the other, to be patient and give affirmation and encouragement.

There are numerous texts, particularly in the Gospels, that we can cite that, in various ways, point Christians to assuming responsibility for their lives and the lives of others, especially minorities and vulnerable persons and groups — and to do so with compassion and in service with generosity and with a sense of sacredness and respect. These ought to be the texts we first go to if we are looking for a supportive word from scripture. These are the texts that would foster communion, put people in touch with each other and equip them to better negotiate the unclear and uncomfortable tensions that may arise when we encounter the unfamiliar. These are the texts that would give us words and quell our fears.

Thank you for this opportunity to share.

Bishop Francis Alleyne was born in Trinidad & Tobago. He studied engineering at the University of the West Indies before entering the monastery at Mount St. Benedict in 1973. He was ordained priest in 1985 before being elected Abbot of the monastery in 1995. He was ordained Bishop of Georgetown, Guyana, in 2004.

Global Solidarity and Reducing the Vicious Cycle of Inequality for the LGBTQ Community

Dr. Edward Greene

This intervention has been structured around my 21 years of active involvement in relevant policies and programs at both regional and international levels engaging with parliamentarians, faith leaders, youth leaders, representatives from the private sector, academia, civil society, the LGBTQ community and those living with and affected by HIV. Altogether, my associations with these groups, individually and at times collectively, have taught me that to make an impact on human development and change one has to be proximate. By "proximate," I mean "grounding with," so as to better understand and champion the plight of the marginalized, the most affected, the neediest. As a result, I can tell you that, whether defending access to affordable medicines as a human right or empowering women and girls, or supporting the inclusion of comprehensive sexual education in our schools, or protecting the human rights of lesbians, gays, bisexual and transgender people — whatever the cause — the goal must be to **leave not one individual behind.** And so, I will attempt to establish from my experience a broad template for overcoming challenges to achieve inclusiveness, equal rights and social justice for all.

I am glad to note that some of my colleagues in faith from the Caribbean region are engaged in this dialogue and will speak to specific inflection points within those areas for promoting a shared vision and equality. I am particularly grateful for the experience through my involvement in the Pan Caribbean Partnership Against HIV/AIDS (PANCAP) Justice for All programme with Dereck Springer, its director, and Canon Garth Minott, chair of the Regional Consultative Steering Committee. It is encouraging to note that faith leaders have fully endorsed the five principles of the PANCAP Justice for All programme, which also became a prominent template for action among other stakeholders, including parliamentarians and civil society leaders at the local, national, regional and international levels.

Table 1: Key Principles of PANCAP's Justice for All

- Enhancing family life and supporting those in need
- Increasing the access to treatment and affordable medicines
- Reducing gender inequality including violence against women, girls and children
- Promoting sexual and reproductive health and rights, including age-appropriate sexual education

- Implementing legislative reforms to eliminate stigma and discrimination against people living with HIV

The first and overarching principle of Justice for All, in particular, embraces the impulses of Christianity: contrition, gratitude and love. These impulses are best expressed in Matthew 25:31–40 as the kingdom of mercy where strangers will be welcome, and love is the driving force.

The principles of Justice for All further illustrate how the AIDS movement brought to the fore stigma and discrimination and the need to care for the marginalized. HIV also exposed the fault lines in society and taught us that in order to protect society as a whole, we have to protect everybody. The more recent ecosystem has made it clearer that the struggles to eliminate discrimination against the LGBTQ community, as an essential precondition to ending HIV/AIDS, are comparable to the conflagration of the Black Lives Matter movement against institutional racism across a global social consciousness, and those confronting the devastating effects of the coronavirus pandemic.

In the search for solutions to all these issues, we turn to science and empirical research for guidance to our policies, and most relevant to this gathering, to underscore our prayers and supplication. What we learn can be seen in Table 2.

Table 2: General Configuration of Challenges to LGBTQ Communities

- LGBTQ individuals encompass all races and ethnicities, religions and social classes.
- LGBTQ individuals face a range of social and economic imbalances, chief among which are health disparities linked to societal stigma and discrimination.
- According to UNAIDS more than 65 countries criminalize same-sex relations, including eight that impose the death penalty.
- Denials to their civil and human rights are pervasive.
- Discrimination against LGBTQ individuals has been associated with high rates of psychiatric disorders, substance abuse and suicide.
- LGBTQ individuals frequently experience violence and victimization, which have long-lasting effects on them and their communities.
- Personal, family and social acceptance of sexual orientation and gender identity often affects the mental health and personal safety of LGBTQ individuals.

More specifically, we learn that the social determinants affecting the health of LGBTQ individuals largely relate to ill-treatment and prejudice, as noted in Table 3.

Table 3: Social Determinants Affecting the Health of LGBTQ Individuals

- Legal discrimination in access to health insurance, employment, housing, marriage, adoption and retirement benefits.
- Gay men are 28 times more likely to contract HIV than the general population.
- Transgender people, who account for an estimated 0.1 to 1.1% of the global population, are 13 times more likely to contract HIV.
- Lack of laws against bullying in schools.
- Lack of social programs targeted to and/or appropriate for LGBTQ youth, adults and elders.
- Shortage of health-care providers who are knowledgeable and culturally competent in LGBTQ health.

In Table 4, we learn also of the huge differences in socioeconomic disparities affecting LGBTQ individuals.

Table 4: Socioeconomic Disparities Affecting LGBTQ Individuals

- LGBTQ youth are two to three times more likely to attempt suicide.
- LGBTQ youth are more likely to be homeless.
- Lesbians are less likely to get preventive services for cancer.
- Gay men are at higher risk of HIV and other STDs (in the US, this is especially true among people of colour).
- Lesbians and bisexual women are more likely to be overweight or obese.
- Transgender individuals have a high prevalence of HIV, STDs, victimization, mental health issues and suicide, and are less likely to have health insurance than cisgender individuals.
- Elderly LGBTQ individuals face additional barriers because of isolation and a lack of social services and culturally competent providers.
- LGBTQ populations have the highest rates of tobacco, alcohol and other drug use.

These disparities are interconnected with the long and storied tradition of advocacy for human rights and social justice through scholarship, research and activism. In all these facets of consciousness, the church and its leaders are expected to play a vital role.

How Faith Leaders Are Handling These Challenges

The 2017 Intimate Conviction conference, sponsored by the HIV Legal Network, examined the church and sodomy laws across the Commonwealth and assisted in constructing the intellectual infrastructure for a high-quality conver-

sation with faith leaders. In the Caribbean, PANCAP, in collaboration with the Regional Consultative Steering Committee, has advanced beyond discussion, to engagement and involvement of LGBTQ individuals in addressing the specific challenges.

Major lessons learned in the PANCAP Justice for All consultations are that faith leaders, and more specifically, church leaders, are by no means homogeneous. It is reasonable to distinguish between the church as institution and the church as organism. As an institution, the church is a formal organization, like government and schools, with a purpose, plan, structure, officers and mission. In the case of church work and church workers, social problems and policy proposals are addressed through synods and denominational boards. As an organism, the church is a body or communion of believers, not a unified organization but an aggregate of individual believers. In addition, there are differences between religious and theological orientations in much the same way as one would classify varying political or academic strands as progressive, moderate or conservative — and of course there is the non-religious: the agnostic to the atheist. Wherever on this spectrum one is located, Christians, individually or collectively, or in their institutional or organic roles, are called upon to be responsible, compassionate and law-abiding citizens.

Church or Kingdom work can benefit from the empirical evidence of studies and reports that focus on the tensions that exist in the global struggle for reducing inequalities and increasing inclusiveness of the LGBTQ community. These are highlighted among others in the October 2019 report from the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the PANCAP 2017 report on human rights and social justice in the Caribbean with a focus on the LGBTQ community.

Recommendations from these reports, in which LGBTQ people are involved, provide the pillars for advocacy. Yet in the Caribbean, the Caribbean Community (CARICOM) Model Anti-Discrimination Bill, endorsed by CARICOM Attorneys-General in 2012, is yet to be implemented at the national level despite the Parliamentarians Sensitization Forums convened by PANCAP from 2017 to 2019. Notwithstanding widespread commitment of PANCAP stakeholder groups — faith leaders, parliamentarians, civil society and youth — to the Justice for All Roadmap, there is resistance to approve the elements that call for eliminating the laws that discriminate against LGBTQ individuals. While Caribbean faith leaders' unprecedented declaration to end the AIDS epidemic by 2030 has been adopted in principle, several elements of the institutional church have either retracted from their commitments or have led demonstrations against the court decisions in Belize and Trinidad and Tobago to abolish discriminatory laws against same-sex relations.

Outstanding Questions and Positive Global Interventions

What is so difficult about understanding that discriminatory laws and socio-cultural norms continue to marginalize and exclude lesbian, gay, bisexual, trans and gender diverse persons from education, health care, housing, employment and occupation, and other sectors? Why is there resistance in recognizing that access to economic, social and cultural rights is hampered by discriminatory laws that have negative impacts on individuals, their families, groups and communities?

Table 5: Global Interventions as Guides to Policy and Actions

- UNESCO held the first-ever International Consultation on Homophobic Bullying in Educational Institutions.
- The World Bank aimed to fill the LGBTQ data gap, focused on inclusion in markets, services, and other spaces.
- UNDP developed a set of 51 proposed indicators for the LGBTI Inclusion Index, aligned with the framework of the 2030 Sustainable Development Goals to identify who is "left behind" and why.
- UNAIDS illustrated that states have a moral and legal obligation — under the Universal Declaration of Human Rights, human rights treaties, the 2030 Agenda for Sustainable Development and other international instruments — to remove discriminatory laws and to enact laws that protect people from discrimination.
- An International Labour Organization study (2019) has shown that trade unions and employers have worked to promote the meaningful inclusion of LGBTQ people in the workplace, adopted by businesses in Europe.

Why Abolition of Sodomy Laws Matters: Where Are We Positioned in the Arc of Social Justice?

Homosexuality is a part of the human experience. It is not relegated to one race or ethnicity. It is perhaps the strongest obstacle to embracing full equality for our LGBTQ peers. Originally, sodomy laws were part of a larger body of law — derived from church law — designed to prevent non-procreative sexual relations anywhere, and any sexual relations outside of marriage. As the gay rights movement began to make headway, especially in the last 15 to 20 years, and the social condemnation of being gay began to weaken, social conservatives increasingly invoked sodomy laws as a justification for discrimination.

Nowhere did unmasking the ambiguity to social justice materialize more than in the 2020 Black Lives Matter demonstrations in the US, which had a world-wide ripple effect. Here was acknowledgment that all human beings deserve to be

treated fairly; to have equal protection under the law; and to have corresponding access to all the services and conveniences, benefits, protections and even responsibilities that go with living in a civil society. Denial of these rights, especially as it relates to sexuality in general and homosexuality in particular, derives from a very conservative interpretation of Bible teaching. Yet there is nothing in even conservative Evangelistic theology that would say that homosexuality should be criminalized, while adultery and fornication are not. In the Old Testament, they are all capital offences — like the breaking of the Sabbath.

The reality is that in our families, at our jobs, in our schools and neighbourhoods, and of course in our churches, LGBTQ people are all around us. We have adopted a sort of "don't ask, don't tell" policy instead of allowing our LGBTQ peers to affirm who they are and supporting them. It is puzzling that those who can speak out so strongly for racial justice or climate justice cannot speak as strongly for LGBTQ justice. Very often our appeal for LGBTQ justice is met with the refrain "But the Bible says…" Such a refrain can be understood in the context of differences in theological positions, but it becomes repulsive as a shield for animosity, venom and hatred. Dorothy Day reminds us that love cannot be demanded; it can only be responded to: "I really only love God as much as I love the person I love the least."

Rev. Dr. William J. Barber II, American Protestant minister and co-chair of The Poor People's Campaign: A National Call for Moral Revival, puts it starkly:

> *"I can't tell you how many times I have been sentenced to hell, not by God but by human beings who want to come and beat me up with the Bible. I think I know the Bible just as well as the folks who come to me. But they seem to act like I have never read it. Yes, I have read it. There are many themes in the Bible. But to me the underlying theme is justice, love, equality, freedom and compassion. When we look at Jesus as our model, that is what we get."*

Some Glimmers of Hope

There is need to take note of glimmers of hope from leadership of the institutional church:

- Pope Francis's call for civil union laws to apply to same-sex couples.
- Presiding U.S. Anglican Bishop Michael Curry's recent book *Love Is the Way: Holding on to Hope in Troubling Times.* He redefines love not as a sentiment but as a commitment to human dignity and social justice.

- Catholic Bishop of Trinidad and Tobago Jason Gordon and Anglican Archbishop of the West Indies Howard Gregory of Jamaica, who succeeded Most Rev. Dr. John Holder, keynote speaker at the 2017 Intimate Conviction conference, have added their voices in support of legislation abolishing the sodomy laws.

Now Barbados is poised to become the first CARICOM member state to recognize same-sex unions. Governor-General Dame Sandra Mason announced the news at the opening of the country's new parliamentary term on September 15, 2020, saying, it was "time to end discrimination in all forms." But it remains to be seen how public opinion will go on this issue once the proposed referendum takes place; there is an expectation that several religious bodies will speak out against it. The decision of the national referendum may yet reveal the disposition of the church as organism — not only in Barbados, but also elsewhere in the Caribbean.

Reflections on the Future

Throughout my journey in advocating for Justice for All, I have interacted with colleagues of faith who are okay with welcoming LGBTQ persons, as long as we can say that we are "loving the sinner but hating the sin." This has been problematic for me because of my belief that it denies the essential and authentic personhood of LGBTQ individuals. It is clear to me that our discussions at this second iteration of Intimate Conviction in 2020 are capturing a moment when the needle has been shifting slowly toward LGBTQ justice. Maybe the transformation will occur more rapidly through ligation in the courts of law. But for sure, the church as organism is being propelled by elements of the church as institution. Bishop Jason Gordon's homily on The Feast of Christ the King hails Christianity as an event that is moving the world to another stage of development through the kingdom of love and peace.

Hence, we end where we began: That is, recognizing that religious witnesses have been essential to the success of movements for justice throughout the world. While religion has always shown its progressive and conservative sides (and has sometimes been an uneasy combination of the two), faith communities have been able at critical moments to convert their prophetic power into what Martin Luther King, Jr., in 1963 referred to as "the jangling discords of our nation into a beautiful symphony of brotherhood [and sisterhood]." His famous I Have a Dream speech says, "we will be able to hew out of the mountain of despair a stone of hope," which fittingly encapsulates the legacy of Martin Luther King, Jr. Let this consultation roll out the stone of hope.

Dr. Greene is currently Chancellor of University Guyana, CEO, Global Frontier Advisory and Development Services (GOFAD) and member of an exclusive group of Global Diplomats without Borders. He was former UN Secretary General Special Envoy for HIV in the Caribbean and Assistant Secretary General Human and Social Development, CARICOM, and has had a distinguished academic career at the University of the West Indies as Professor, Director, Institute of Social and Economic Research and Pro Vice Chancellor, Alumni and Development.

References

W.J. Barber II, "Straight People and LGBTQ Must Stand Together Against All Injustice," sermon at Repairers of the Breach for Pride Month, Washington, D.C., June 10, 2018.

Bishop J. Gordon, "Homily: The Feast of Christ the King," Holy Mass, Port of Spain, Trinidad, November 22, 2020.

Most Rev. Dr. J. Holder, "Keynote Address: Examining the Church and Anti-Sodomy Laws across the Commonwealth," *Intimate Conviction,* Canadian HIV/AIDS Legal Network, 2018.

M. Luther King, Jr., "I Have a Dream," speech delivered at the March on Washington for Jobs and Freedom, Washington, D.C., August 1968.

CARICOM, PANCAP Justice for All Roadmap, September 2016.

PANCAP, CARICOM Model Anti-Discrimination Bill, May 2012.

UNDP, LGBTI Inclusion Index, NY, March 2018.

Churches and LGBTQI Humanity: Learning Lessons from the Struggle

Allan Aubrey Boesak

In 1986, in the midst of the darkest times of our struggle against apartheid, my denomination adopted a new confession: the *Confession of Belhar.* The main pillars of *Belhar* are our unity in Christ, the reconciliation wrought by Christ and the justice demanded by God.

At the heart of the Confession is what we confess about God. "We believe," *Belhar* says,

> *that God has revealed himself as the one who wishes to bring about justice and true peace among people;*
> *that God, in a world full of injustice and enmity, is in a special way the God of the destitute, the poor and the wronged;*
> *that God calls the church to follow him in this, for God brings justice to the oppressed and gives bread to the hungry;*
> *that God frees the prisoner and restores sight to the blind;*
> *that God supports the downtrodden, protects the stranger, helps orphans and widows and blocks the path of the ungodly … ;*
> *that the church must therefore stand by people in any form of suffering and need … that the church must witness against and strive against any form of injustice, so that justice may roll down like waters, and righteousness like an ever-flowing stream;*
> *that the church, as the possession of God, must stand where the Lord stands, namely against injustice and with the wronged … [italics added]*

Succinctly put, *Belhar* confesses God's radical, indivisible justice; God's radical, indivisible equality; God's radical, indivisible inclusivity; and God's radical, indivisible solidarity. So while *Belhar* came into being in apartheid South Africa, the confession itself rises above and reaches far beyond racism and apartheid.

The Dutch Reformed Mission Church, the church I was born into, was established in 1881 as an apartheid church, the result of the white Dutch Reformed Church's racist, white supremacist ideologized theology and the desire of the white colonizers of my country and of my people to exert complete domination over the colonized, in society and in the Church. For three quarters of a century, under control of white missionaries, my Church did not utter one word of protest against colonization, imperialism or apartheid. But since the Soweto uprising in 1976, we found our voice and mounted serious and increasingly intense resistance against the regime and the Church that provided apartheid's biblical, moral

and theological justification. In that time, and in the decade that followed, thousands of members of our Church, especially its youth, would be fully and wonderfully involved in the struggle for freedom and racial justice in South Africa. This prophetic church in South Africa had taken leadership in the struggle in a way never seen before.

I was the moderator of my church and in the chair during that memorable 1986 General Synod session where the prophetic church came into full bloom. The adoption of *Belhar* was a crown jewel of what African-American theologian Gayraud Wilmore would call the rise of radical, Black Christianity.

I tell you all this for a reason. It was within this context that I was approached by a colleague who pleaded with me to table a strong resolution in support of LGBTQI rights. In light of what was happening, the Church was ready, he argued. I was certainly ready for such action. My own personal, theological and political convictions on the matter were clear. Yet I hesitated. Would we not cause a backlash, create new tensions, perhaps even undo what we had achieved? Would the Church have the courage to go that far? I hesitated, and finally turned him down. I have come to regret my hesitation. Perhaps it was not the courage of the Church that was in question. Perhaps it was my own. There is such a thing as a Kairos moment: a God-given moment that calls for discernment, decision and bold actions of faith. Perhaps that was such a moment, and I did not discern it. In the years that followed, as I witnessed the injustices and indignities heaped upon LGBTQI persons, saw the horrific dangers to their lives increase and their exclusion from acceptance in the Church intensify, my activism grew. But my regret for that moment of fatal hesitation never left me.

So here is the first lesson for those of us involved in these ongoing struggles for justice, dignity and the recognition of full humanity for LGBTQI persons. **Have a Kairos consciousness, a spiritual and political alertness, for the moments that provide an opportunity for the struggle to advance.** Never underestimate the power of God's Holy Spirit when, where and while She is at work. She blows where She wills, Jesus taught us, and there is no telling where we may end up if we allow that wind to take us where She wills.

At its 2008 General Synod, the Uniting Reformed Church in Southern Africa considered a report on the Church's stand on the question of sexual orientation and nonconformity. That was a moment, in my view, in which this Church — which had declared apartheid a sin, its biblical and theological justification a heresy and led the ecumenical movement in doing the same, and which in formulating in 1982 and adopting in 1986 the *Confession of Belhar* as a new standard of faith — faced its greatest challenge since confronting apartheid.

I was the convenor of that task team and presenter of the report at the synod. It was one of those utterly shattering, fundamentally life-changing experiences.

After a hostile, and theologically disturbingly crude, debate, the synod rejected the report, its contents, its conclusions and its recommendations calling for justice for LGBTQI persons and referred the report for reconsideration. Even though the words, "another, more anti-gay report" were deleted from the amended version of the original proposal, the intention could not have been clearer.

What was striking and shocking, even though hardly unknown in debates on this matter it seems, was the stridently hostile tone of the debate, the blatant homophobic, bigoted language that dominated the discussion all through the afternoon. Speakers who took the floor did not even attempt to disguise their contempt. Some spoke openly of LGBTQI persons as "animals" and "not created by God," and of bestiality and LGBTQI persons in one breath, all of which as being a "scandal" and "stain" upon the Church.

It was an experience that had left me shaken and disoriented: how could the same church that took such a strong stand against apartheid and racial oppression; gave such inspired and courageous leadership from its understanding of the Bible and the radical Reformed tradition; had, in the middle of the state of emergency of the 1980s with its unprecedented oppression, its desperate violence and nameless fear given birth to the *Confession of Belhar* that spoke of reconciliation, justice, unity and the Lordship of Jesus Christ now display such blatant hatred and hypocrisy, deny so vehemently for God's LGBTQI children the solidarity we craved for ourselves in our struggle for racial justice, bow down so easily at the altar of prejudice and bigotry? How could it be that we who had rescued the Reformed tradition from the heresy and blasphemy of the theology of apartheid of the white Dutch Reformed Church and forged a new identity for that tradition in struggles for justice and compassion were now the ones embracing that heresy in our howling condemnation of our own flesh and blood because of their different sexual orientation?

And here is lesson two: **We should not assume that churches, like the Black Church in South Africa and in the USA, with strong credentials in struggles for racial justice, will show the same commitment in the struggles for the justice and dignity of LGBTQI persons.** But this raises serious questions for the church in South Africa as a whole, that Church that stood so prophetically against the vicious inhumanity of apartheid during the struggle for freedom. The same questions arise for the church in Africa and elsewhere. Should we expect those who, in their own struggles against racist and colonialist oppression, leaned so heavily on the exodus metaphor as inspirational in the struggle to take that paradigm one step further? In other words, will those who stood so firmly on Exodus 3:7 ("I have observed the misery of my people who are in Egypt; I have heard their cry ... and I have come down to deliver them"), now, as wholeheartedly, embrace Exodus 23:9 ("Know the heart of an alien, [meaning the Other] for

you were aliens in the land of Egypt")? Will they understand that LGBTQI persons are made into aliens in their own land, strangers in the church, exiled from our love, consideration and compassion? Will they understand that all outsiders, like they once were in the country of their birth, are worthy of inclusion, and that that inclusion is God's intention? Will they understand that LGBTQI persons are not outsiders "by nature," as if God willed it so, but are made into outsiders by our sinful acts and attitudes, by our hateful rejection of those God has had the temerity to make in God's image, but not in ours? For us the answers may be obvious. But let us not make assumptions that prolong the pain of our LGBTQI family.

What called forth the most ire by far at the synod, however, was the fact that the report interpreted the *Confession of Belhar* in a way that called for solidarity with LGBTQI persons, and for them to be embraced and included, in the same way that *Belhar* calls for justice and dignity for people of colour in a racist dispensation. Probably the best-known words of *Belhar* are the words that echoed in the Church's conviction that "the church must stand where the Lord stands": namely, with the wronged, the poor, the destitute and powerless against the powerful; and against *any* form of injustice and oppression. The report took the view that these categories included all those oppressed, despised, rejected, marginalized and excluded from meaningful life as a result of their sexual orientation.

The report argued its assumption that the Church's embrace and acceptance of *Belhar* cannot but bring the Church to accept and embrace LGBTQI persons in the fullest sense of the word. That means that the Church accepts:

1. That LGBTQI persons, on the basis of their faith in Jesus Christ as personal Saviour and Lord of their life and of the Church, are without any reservation full members of the church of Jesus Christ.
2. That LGBTQI persons deserve justice in the same way the Church claims justice for the destitute and the wronged, both before and under the law, in civil society and in the Church, and the Church commits itself to actively pursue that justice in all areas of life.
3. That our commitment and calling to unity and reconciliation require that LGBTQI persons, as confessing members of the Church, have access to all the offices of the Church, including the office of minister of the Word.
4. This access should, in the interests of justice and pastoral concern, not be prejudiced by demands for celibacy if the relationship is one of love, respect and genuine commitment. Should the criteria for heterosexual married persons apply, the Church must then take a decision on support for, and the blessing of and officiating at same-sex marriages as allowed by the Constitution of South Africa.

Now let me say a word about the word "embrace." Churches, as my own did at the previous synod in 2004, often take resolutions that speak of "embracing"

LGBTQI members. Those sentiments may not always be intentionally hypocritical, but they are purposely vague and therefore meaningless — a fig leaf behind which we often hide our fears and our discomfort with the LGBTQI Other, and consequently, our resentment at the God who created them. We must not confuse superficial sentimentality with Christian love. Neither must we confuse "embrace" with "tolerance."

We speak of "embrace" while in reality we intend only to tolerate LGBTQI persons, so long as they do not embarrass us by being themselves too openly; so long as they do not shame us by unashamedly loving each other as if their love is of the same quality as ours; and so long as they do not think that their equality before God equals equality in our eyes in the Church, where we have to guard against the immorality of the Constitution that dares to differ from our perverted reading of the Scriptures. "Embrace" means active inclusivity. It does not tolerate any notion of distance. Not in terms of membership, nor in service or in ministry in any sense of calling recognized by the Church. The only yardstick here, as it is with all members of the Church, is "true faith in Jesus Christ." That is the meaning of unity, reconciliation and justice. Inasmuch as that is denied, or something added to, I argued to my Church, we are reinstituting the heresy we have accused the white Dutch Reformed Church of.

The response of the synod was shocking. So shocking that I, that very day, announced my resignation from all positions in the Church. I did not resign my membership or annul my ordination in that denomination, but I simply could no longer be an official representative of a church that so openly flouted the love and justice of God, the calling of prophetic truthfulness, embedded solidarity and simple, human compassion. In deciding that my ordination in a denomination was not equal to my calling, I decided also that my calling now was to fight that particular battle elsewhere.

This brings me to lesson three. **My church was ready to accept the *Confession of Belhar,* but it was not ready to accept, and stand by the *consequences* of that confession.** *Belhar* confesses God as the God of radical, indivisible justice; radical, indivisible equality; radical, indivisible inclusivity; and radical, indivisible solidarity. Hence *Belhar*'s insistence that we stand against *all* forms of injustice, wherever they may be found, and against *all* the powerful and privileged, who in their greed and corruption, their sense of entitlement and destructive solipsism are maintaining our country's scandalous status as the most unequal society on earth — against all bigotry, baptized or otherwise; all patriarchy, sanctified or otherwise; against all homophobia and transphobia, deified or otherwise. And with *Belhar*, we reject every ideology that justifies these, every policy that legitimizes these and every theology that sacralizes these. But the moment *Belhar* called for solidarity other than with our Black selves, to stand against

oppressions other than against our Blackness, to fight for justice for others not denied by the colour of their skin, we balked, looked the other way, stepped aside and let them be despised, targeted and killed. It is not responding to the pain of our own selves that makes us compassionate. It is recognition of the pain of others that makes us compassionate. Not knowing that is not just brutally unfaithful. It is almost unforgivable. It is certainly inexcusable. Churches, always ready for great statements, are not always ready for the consequences of those statements. Hence the need for prophetic voices to speak truth to power.

As a result of this unfaithfulness, my church hardly has any credible voice when it comes to these urgent matters in Africa.

In South Africa, LGBTQI persons are victims of all kinds of abuse and violence, including murder and so-called "corrective rape" by gangs of thugs, especially of lesbian women, a perverse kind of "therapy" to make them change their "deviant" ways now that they know what "real" sex with "real" men is like. This is on the increase despite South Africa's constitutional protection of the rights of LGBTQI persons, including their right to marriage. For us, this violence constitutes an immediate crisis, since it is, for God's LGBTQI children, literally a matter of life and death.

When then president Jacob Zuma appointed that rabid homophobe, journalist Jon Qwelane as South Africa's ambassador to Uganda of all places, there was huge public outrage. And rightly so. It made me proud. But what made me inexpressibly sad was that my church, the Uniting Reformed Church in Southern Africa, did not join that chorus of righteous outrage. We could not, dared not, because just the year before we had proven ourselves just as rabidly homophobic, filled with just as much hatred, drenched in just as much hypocrisy and bigotry as the designated ambassador and the man who appointed him.

Thirty-one African countries use colonial-era laws (brought there by the colonialists, not confirmed as an authentic African tradition rooted in the wisdom of *ubuntu*) that legitimize discrimination against and criminalization of nonconformist sexual orientation and love. At the forefront of the battle for these shameful outcomes are the Christian churches.

The rest of the world is not doing any better. LGBTQI hatred is growing: in Viktor Orbán's Hungary, in Poland, in multiple Latin American countries and in many parts of America. And everywhere, the church — vessel, instigator and nurturer of a virulent, violent, sanctified bigotry — is at the heart of it. In Russia, Vladimir Putin, the KGB agent turned president, seeks wider public support for official homophobia, and his first port of call is the church, a perfect partner for his brutal authoritarianism.

Can we step back from the brink and find our prophetic voice, our Christian integrity, our Gospel authenticity, our Jesus-inspired compassionate justice again?

Here let me offer lesson four: **We should never lose hope.** In this struggle, we cannot do without it. I do not mean the "hopeless mania for hope," as American journalist and social critic Chris Hedges calls it. That maniacal hope that mystifies reality, and hence cripples, paralyzes and disempowers us. I am speaking of hope the way African Church Father Augustine does. Hope, he says, is a mother with two daughters. She named them Anger and Courage. Anger at the way things are and courage to not to allow things to remain the same. Hope as anger that burns. Hope as courage that transforms. If we lose hope, somebody loses their life.

There is something else. On the last Sunday of September, at the invitation of the leadership of my church, I was asked to speak to the Church on the relevance of the *Confession of Belhar.* I reminded the leadership of our history of tension on this matter, my resignation and my ongoing critique of the Church's position since. They recognized all that but still wanted me to speak, since my "voice was needed," they said. So I did. And the responses were astounding. My hope was rekindled. Is this perhaps a sign of a new hearing and understanding, and even conversion? But the Spirit blows where She wills.

But here is a deeper reason for my hopefulness. The church, *Belhar* proclaims, is "the possession of God." Jesus is Lord. What does that mean? It means that God (the God of Jesus of Nazareth, not the false god that blesses slavery, apartheid, genocide and oppression) is a God of justice, and that God calls the church (that is, those of us who call upon the name of Jesus and seek to follow him as his disciples) to follow God in this … that the church must therefore stand by people in any form of suffering and need (no excuses, exceptions or compromises), which means that the church must witness any form of injustice so that justice may roll down like waters and righteousness, like a mighty stream; that the church as the possession of God (not the possession of the privileged and powerful, the strong and the loud-mouthed, the arrogant and the bigoted, the cowardly and the indifferent) should stand where God stands, namely against injustice and with the wronged. If we truly believe this, and enact it, the angels in heaven will rejoice in our faithfulness and the world will be a different place.

Rev Dr Allan Aubrey Boesak is a South African Black liberation theologian and global human rights activist. Currently Professor of Black liberation theology and ethics at the University of Pretoria, Dr. Boesak is author of 23 books, the most recent being Children of the Waters of Meribah: Black Liberation Theology, the Miriamic Tradition and the Challenges of 21st Century Empire. *He is the recipient of 13 honorary degrees and over 20 international awards. In 2017 he was inducted into the Martin Luther King Jr. International Board of Preachers, the only African to be so honoured.*

SECTION ONE

THE CHURCH AND DECRIMINALIZATION IN THE CARIBBEAN AND LATIN AMERICA

Making Good Trouble!

Fr Clifford Hall, Host Pastor

Jesus predicted it. So many have come here from east and west to share together in the garden of God, whose face, whichever way we turn, is always upon us and whose compassion is for all that's been made. We're here, as my prayer book tells me, not as separate streams but as countless currents in a single flow. We're life in its manifold oneness. We all hunger for wholeness. We've come to understand through the lens of love in our hearts and not, dare I say, through our capacity to read and swallow wholesale the "sins of scripture." It's time to put those things, those "precepts of men," away.

We've come to speak from compassion and love — and forgiveness. What's the good in being a Christian, a follower of Jesus our Master, if all one practices is the shallowest judgmentalism on behalf of an old man in the sky, as is supposed by so many still, who works His divinity through orders backed by threats? Can that be a God of Love? And what's the point of being a legislator, of being Caesar, in lands which are not theocracies, if the legitimate interests and rights of an authentic and honourable social group are ignored because of the protestations of the Christian 'right,' whose understanding of God and Biblical texts has not moved beyond the first century, who ignore the teachings and life of our brother and friend, and the flights of love of the Holy Spirit down the arches of the years?

So many speak as if the significance of a person's sexual orientation is something recently discovered. Well we're fortunate. The great ones are here with us: Socrates, Leonardo, Michelangelo, Francis Bacon, Erasmus, Byron, Tchaikovsky, Diaghilev, Nijinsky, A. E. Housman, Walt Whitman, Oscar Wilde, Marcel Proust, T. E. Lawrence, Ivor Novello, Nureyev, Benjamin Britten, Dylan Thomas, James Broughton, Allen Ginsberg, Alan Turing, so many more — and all gay or bisexual. How could God possibly have touched all these with that most divine quality — creative genius — if in the grand scheme of things their sexual orientation mattered one jot in heaven? We stand with Gamaliel. If it lasts, it's of God. And that's how it is.

People can be very cruel, and all the more heart-breaking when that cruelty strikes in the name of religion. If that's religion, keep it. We're sick and tired of your infantile Biblical literalism. We're sick and tired of hearing that we're an "abomination" to God, that we're "animals," "lepers," that our lifestyle is "chosen," that we're "deviants," that with the right counseling therapy we can be "cured." You've caused enough harm to innocent people, who are as divinely made as you are. We're not beggars. We're asserting our inalienable humanity.

So stop judging, stop playing God, and open your hearts to the sacred Spirit of love within you. We all have it. There's one Life in all our lives. Don't you know that yet?

But understand this. We don't hate you as you hate us. No. St. Brigid was right. "It is a virtue and a prize to suffer insults for the sake of God." We were born to love, you see. There's no other way, is there? So we want you to accept us, to become our friends, that we can share earth's goodness with you, share our lives in the one divine Life. That's the prayer of this conference for you. Remember: at some time or other we've all cried ourselves to sleep, so don't let's laugh at each other anymore. Maybe, as the song tells, "someday we'll all have perfect wings."

But there are two others here with us. Archbishop Desmond Tutu is one. I have his signed photograph here before me. Here he is. Can you see? He stands with cross held high before him. As you probably know, his daughter, Mpho, is lesbian and she found in her daddy the most supportive parent anyone could wish for. On my photograph are the words "God bless you" — so there you are. He's here in spirit. I wonder if you know the story of Rev. Franklyn Shaefer, once a pastor in the United Methodist Church in the U.S. He solemnized the gay marriage of his son, Tim, and was denounced by his church. It's all recorded in his book, *Defrocked*. What resilience, courage, love — truly a child of Jesus!

Our other guest? Well, her presence came as a shock, but in truth I should have known. I realized while Chancellor Dr. Edward Greene was speaking. In his presentation he quoted from Mother Teresa and, as he spoke her words, I had the most glorious vision of Mother Mary standing upon a rainbow, with arms outstretched to us. My eyes welled with tears and the words "children of Mary" came to me. It's a phrase in the *Lourdes Hymn,* but I didn't know that then. The children? Well, make of it as you will. But remember this. When Jesus looked from the Cross at his Mother, he entrusted her to John and, as Pope Francis reminds us, we are all present in the apostle. "As Mother of all," he said, "she is a sign of hope for peoples suffering the birth pangs of justice….. As a true mother, she walks at our side, she shares our struggles and she constantly surrounds us with God's love." So yes, the Holy Mother is most certainly with us.

Well, the Preacher had it right. Perhaps here in Barbados it's now a time "under the sun" to heal, to build, even to dance — and smile. Twice.

As you may know, in September 2020 it was announced in Barbados that government will introduce legislation for the courts to recognize same-sex unions. Let's call them 'partnerships.' Same-sex marriage will be put to the people in a referendum. Now you can't have same-sex partnerships unless you first repeal section 9, Sexual Offences Act 1992, the buggery offence. For some reason, government has been silent on that. Yet it's because of that crude and antiquated

type of legislation that pressure for change has, for years now, been applied to Caribbean countries, particularly within the Commonwealth. Barbados' answer, through the Governor-General, in September?

> *If we wish to be considered among the progressive nations of the world….a society as tolerant as ours [cannot] allow itself to be 'blacklisted' for human and civil rights abuses or discrimination on the matter of how we treat to human sexuality and relations. My government will do the right thing….no human being in Barbados will be discriminated against, in exercise of civil rights that ought to be theirs.*

Yes, a cause to smile. But then the prophet — beloved Pope Francis in October 2020. "What we have to create is a civil union law. That way [LGBTQ people] are legally covered." Well, Italy has had a same-sex civil union law since 2016. Bless him, Pope Francis has repeatedly affirmed LGBTQ persons. Do you remember? "God made you like this and loves you like this," and "Who am I to judge?"

The response here in Barbados to the government announcement? Well, newspaper editorials have been favourable. There've been some other wonderfully supportive newspaper contributions in letters and feature articles. But then, the Christian fundamentalists, the Pharisees of our day, have been writing too — and zealously marching — in opposition. Here's a snippet of a letter from a pastor. "Acceptance of the LGBTQ agenda is an acceptance of lies and twisted truths." And then: "Legalization [of same-sex intimacy] leads to legalization of any conceivable lifestyle… and cripple our Caribbean society." Where do they get it from? And then another, from a reverend purporting to speak for all Barbadians: "It will legalize abominable acts," and remove the "cultural, moral and spiritual pillars on which our country is built."

She doesn't say what these "pillars" are. What about illegitimacy, concubinage, mean spiritedness, playing around, adultery, living together out of wedlock, absentee fathers, gold digging, dress code obsession, homophobia and Pharisaism? The idea of 'Christians' marching against a principled, authentic social group, demonstrating their legal and Biblical ignorance in the process, and with words of hate on their lips and placards, makes them — well what? I'll leave that to you and Jesus.

There's nothing new in any of it. It's been spewed out here for years. It makes the Christian faith, like the "aged man" in *Sailing to Byzantium,* such "a paltry thing, a tattered coat upon a stick." Whatever else, it's not the love which Jesus taught. A heterosexual friend in U.K. described the 'Christian' marching as "vile and disgusting." I find it difficult to disagree. Yet we're not disheartened.

Jesus calls us as we are. And in response, like the aged man, let each soul in us "clap its hands and sing" — yes, and "louder sing." Byzantium is ours too. It's the Love within, the Love in the deep heart's core. But be ready. It's a Love too that's on the wing. In the Athenry fields, the "small free birds fly" again.

Decriminalization of buggery? It's been a world-wide phenomenon for decades — except in the lands of religious zealots. Meanwhile, the stars remain in their courses, and the earth hasn't caved in on itself. But yes, well done Belize and Trinidad and Tobago for decriminalizing it. And more wonder: the landmark decision of the Caribbean Court of Justice in 2018 in *Fraser & Others,* the case of the Guyanese cross-dressers. The magistrate had held the accused's conduct was "unchristian," and that they must go to church to give their lives to Jesus. You what? It's a paradigm of what we face here. You can't be you and Christian according to them. The CCJ held Guyana's cross-dressing law unconstitutional. *Per* Justice Saunders: "Law and society are dynamic not static." Yes, we're in Caesar's world now.

The standard secular argument against decriminalization is that it will encourage pedophilia; on the other side, that it's not the law's business to interfere in the private lives of citizens.

Let's be clear. In the criminal law here in Barbados, as in most of the common law world, two principles predominate when it comes to sex. The first is consent. You can't have sex without it, and the consent must be given by someone capable of giving it. A child, an animal, an inebriate, a sleep-walker, a mentally-challenged person can't give it. Pedophilia is out. Decriminalization doesn't increase the risks. The second relates to the place where the act is done. You can't do it in the street, in any public place, and it doesn't matter what sort of sex it is or with whom. Go home to do it!

Now if these conditions are met, why would Caesar differentiate between buggery and vaginal sex? Many heterosexual couples routinely practice buggery anyway. And sure, it's not the function of the criminal law to punish sin. If it were, why isn't adultery an offence, or having sex before marriage? Mercifully, we're not a theocracy.

Punishing 'sin' is simply not the law's function. The Wolfenden Committee Report, published in the U.K. in 1957, made that abundantly clear. The function of the criminal law, it said, is "to preserve public order and decency, to protect the citizen from what is offensive and injurious, and to provide sufficient safeguards against exploitation and corruption, particularly those who are specially vulnerable." The rest "is not the law's business." Well, it took 10 years, but in 1967 buggery was decriminalized in England. Caesar triumphed!

But why hasn't Barbados followed suit? Why do we allow the former colonial master to rule us from his grave? Don't talk about Old Testament texts.

Israel decriminalized buggery in 1988! Don't argue either that section 9 is rarely enforced so there's no need to decriminalize. Obsolescence can't possibly be a serious ground for retention. And don't say it offends Black cultural norms. Angola, Botswana, Gabon, Lesotho, Mozambique, and South Africa have all decriminalized. In the Democratic Republic of the Congo, Benin, and Ivory Coast there was nothing to decriminalize anyway. Yet what makes Black people so very different from South American, Indian, and Asian people? *De Colores.* The folk song tells of the infinity of colours. They're all pleasing to God, and each of us carries the divine light of diamonds. One world. One humanity. One love.

Now in a sense we've come home. In 2017, the then Bishop of Barbados and Archbishop of the West Indies, Dr. John Holder, delivered a paper at the first Intimate Conviction Conference in Jamaica in which he conclusively made the case, using a contextual approach, that the standard gay-bashing Biblical texts, which Bishop John Spong calls the "sins of scripture," simply can't be used to justify repressive penal laws against LGBTQ people. There wasn't anything entirely new in what he said, but the fact is he said it. His approach was light years from the primitive literalism of those who oppose us: 'It's there. It says God said it. End of story.' His paper wasn't reported here, not even by the Diocese. Why?

Pope Francis has rejected that primitive approach too — indeed, all reputable scholars have: "The Word of God… precedes and exceeds the Bible," Francis said once.

> *This is why our faith is not only centred on a book but on a history of salvation and above all on a Person, Jesus Christ, the Word of God made flesh. Precisely because the horizon of the divine Word embraces and extends beyond Scripture, to understand it adequately the constant presence of the Holy Spirit is necessary….*

The Bible is not sealed, he said. It's not closed to interpretation and must be read contextually "enlightened by the Spirit of truth." Of course. It's "the Spirit that gives life."

Very well. You can't separate Biblical texts from their contexts and the literary forms in which they're expressed. So if the context is the purity and preservation of the tribe in face of captivity among the heathen, as in the Leviticus texts, or points to the overarching power of the law of hospitality, as in the Sodom story, or the nature of the human condition, illustrated by Paul's interminable sin lists and somewhat dotty story of why people are gay (as modern scholars suggest Paul was himself) and lesbian, how can you use them and say they're God's infallible Word for everyone, in all circumstances, and for all time?

Now nothing I've said is intended to deny the authority of scripture. As a witness to divine revelation, it's unique. Yet it too must be interpreted afresh in

every generation and in every context. The Holy Spirit ever calls us to listen, gives us new insights in every age. The heart of our faith is the Gospel. God was incarnate in a man not a collection of books about the history of the tribe of Israel. The Bible points us to Christ. It doesn't imprison him in words. Jesus lives in us, through us. Us. He's ever the Jesus of you and me.

With Him, there was no 'us' and 'them.' There was only us, all of us. Everyone is the centurion's servant, Zacchaeus the tax collector, the woman at the well, the leper, the Canaanite woman. None were 'second class' and all were welcome. Jesus never suggested we hate the sin but love the sinner. 'Hate' was never a Jesus word. No. He spoke only of loving God, loving your neighbour, loving your enemy — only love. There was no 'eye for an eye.' With Presiding Bishop Michael Curry in *The Power of Love* sermon at the Royal Wedding in 2018, quoting Dr. Martin Luther King Jr.: "We must discover [its power]…And when we do that…. we will make of this old world a new world, for love is the only way." Yes, it's ever the "balm in Gilead" which will "make things right."

Yet because of these "abominable" Biblical texts the law says you get life imprisonment if you express your sexual orientation. Whether you believe it's original or acquired really doesn't matter. It's an orientation which touches the very core of our humanity and transcends differences of race, culture, class and creed. If LGBTQ people are displeasing to God, I'm sure He'll sort it out. But He hasn't since time began. Deal with that.

And then again, when the bigots speak of Christianity, whose Christianity do they speak for? Well, it can't be the U.S. Episcopal Church, that's for sure; nor the Anglican Church of Canada; nor the Scottish Episcopal Church; nor the Anglican Church of South Africa; nor the Quakers; nor Unity; nor the various Inclusive Churches around the world; nor even the good old Church of England. And the Roman Church? Well, with Pope Francis it's more than feeling its way. The powerful writing of James Martin, S.J., exemplified by *Building a Bridge,* has been well received. Reviewers from the College of Cardinals have stressed that "LGBTQ Catholics….are as much a part of our church as any other Catholic." But, in any event, what the bigots preach really can't have been culled from the Gospels, can it? Jesus only showed love to those allegedly caught by the Law.

As I say, not even the good old Church of England. Don't be too hard on the Established Church. For one thing we have the outcome of the *Living in Love and Faith* process to look forward to. In 2017, to celebrate 50 years since buggery was decriminalized in England, the Archbishops of Canterbury and York issued a joint statement that it was time people stopped condemning LGBTQ people as the first response to their orientation. They referred with approval to the communiqué issued by a majority of the Primates of the worldwide Anglican Communion a year earlier, which Archbishop Holder helped draft. Yes, it condemned the U.S.

Episcopal Church for its stand on same-sex marriage. That was page one of the communiqué, and it was reported here. Remarkably, what wasn't reported appeared on the second page. This is what it said:

> *The Primates condemned homophobic prejudice and violence….*
> *The Primates reaffirmed their rejection of criminal sanctions against same-sex attracted couples.*
> *The Primates recognise that the Christian church….has often acted in a way [towards LGBTQ people] that has caused deep hurt. Where this has happened they express their profound sorrow and affirm again that God's love for every human being is the same, regardless of their sexuality, and that the church should never by its actions give any other impression.*

They couldn't be clearer, could they? By God's grace, the Bishop of Barbados is listening to this. So look, Barbados. LGBTQ people are not damaged goods. We treasure them. Jesus treasures them. Like the rest of us, they are "wonderfully made." That's why I ever have in mind, for everyone, these words of the Sufi poet, Rumi: "Come, come, whoever you are, wanderer, worshipper… it doesn't matter. Ours is not a caravan of despair. Come, even if you have broken your vows a thousand times. Come, yet again come, come." Yes: "He who comes to me, I will in no wise cast out." Remember? And it's why I ended my address to the marchers at the first Pride March here in Barbados in 2018 with these words of Jesus too: "Fear not, little flock; for it is your Father's good pleasure to give you the kingdom."

Let me end with some marvelous words of the late Senator John McCain, which, for me, rest at the heart of who we are as followers of Christ. McCain's words are a trumpet call to us all, a call which says that those who oppose us will never suffocate our hope and resolution, will never vanquish our spirit. And it's a call too for those we wish to stand with us.

> *I have faith that you understand that assaults on the dignity of others are assaults on the dignity of all humanity. You will not look upon tyranny and injustice….as the inevitable tragedy of man's fallen nature. You will see them as a call to action — a summons to devote your time and talents to a just cause that is greater than yourself, the cause of human rights and dignity. Make this your legacy….*

Well people, isn't that the passion in the heart of Jesus? John Lewis would have called it "making good trouble"!

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The Baptism of the Ethiopian Eunuch (Acts 8:26-40): Gender Ambiguity in Early Christian Antiquity?

Ian E. Rock

The baptism of the Ethiopian eunuch appears to be integral to the ecclesiology and theology of the Lukan church, indeed to the all-inclusive character of this particular community. It stands at the beginning of the gentile mission in such a way that it acts as proof, through its appeal to ethos, of accepting the physically defective in the early Christian church, that the new eschatological community saw itself as fulfilling the Abrahamic covenant. From the beginning of Luke's gospel and continuing through the Acts of the Apostles, we see the fulfillment of the Isaianic prophecy of all-inclusive salvation.

The location of this pericope before the commencement of the gentile mission is of strategic importance. This paper attempts to examine the pericope using narrative analysis and narrative criticism, along with grammatical and lexical analysis, and refer to the principle of intertextual reading, but not devoid of the socio-historical location; it is, therefore, an interdisciplinary, multidisciplinary (postmodern) approach. It attempts to unfold the story of the text by careful analysis of the story world; that is, the world inside the narrative, which is for the most part an imaginary world, as it seeks to critique, correct and transform the world behind the text.

It is strictly an exegesis (what the text could possibly have meant then) and not a hermeneutic (what the text means to us now), though the former must by necessity inform the latter. The approach, therefore, is based on the presupposition that the surface narrative of the text is the place where the worlds of the text and the world behind the text confront each other, a location where analysis can occur. It further accepts the presupposition that the story of the text is to be experienced by the reader of the text.

While narrative criticism has been widely applied to the Pauline epistles, and to some extent to the gospels, its application is not as widespread as historical-based critical analysis. When we speak of narrative criticism as the analysis of the story world, it must first be understood that story is the message and meaning conveyed by the text. Narrative criticism sees the story of Jesus and the attempt by various authors to understand and map the human cognition and worldview of Jesus.

The story of Jesus is defined as God's redemptive activity in the world, which is the fulfillment of God's past promises, and the resulting attempts of communities to enter this redemptive sphere in such a way that the character, attitude and activity of the community is shaped in its response to this primordial story.

Exegetes who have employed narrative criticism have further expanded the map of the story to include the story of the world gone wrong, the story of Israel in that world, the story of Jesus whose story arises out of the story of God as creator and redeemer, and the story of the community that is the interaction and existential hermeneutic that flows from the foregoing stories. To these it is important to add, on the one hand, the story of the main character or characters and, on the other hand, the story of the author.

The story is a historical artifact that therefore cannot be separated from its first-century contextual composition, from time, place and culture, but more importantly from its lexical, linguistic and rhetorical composition and *Sitz im Leben.* In this way, the story becomes the locus of experience not only for the first century but also for the present-day reader. The reader, however historically defined, cannot be emotionally and culturally separated from the story. The reading experience of the first-century reader as it approaches the goal of the author approximates the ideal reader, even though in reality, however, there is no such thing as an unbiased reader.

The goal of the narrative critic is to read against the bias of the traditional exegete, to read against the grain. It is a particular ideological reading. In order to do this, the social location of the author and of the reader must first be stripped of dogmatic and doctrinal bias and any attempts to impose the norms of modern civility and ecclesiological presuppositions. Doctrinal and dogmatic affirmations of the identity of the eunuch in antiquity with modern-day ecclesiological constructs must be avoided.

One clear example of how these may affect the authenticity of a reading is demonstrated in an article by Francis J. Moloney. Maloney recognizes the historical awkwardness of using the term "eunuch" on the lips of Jesus in Matthew 19:10–12 and asserts:

> *[The] word [eunuch] was offensive and crude, and would never have been "invented" by the early Church and placed on the lips of Jesus. The saying must have originally been on the lips of Jesus and it has been preserved, despite the use of such a crude word, precisely because he said it. … It is an offensive enough expression, but in antiquity, where eunuchs were an estranged part of society, it seems impossible that the early Church would have Jesus say that "there are eunuchs who have made themselves eunuchs because of the kingdom of heaven." … The attitude of the ancients to eunuchs was decidedly negative … It is unthinkable that the early Church would have spoken of its members with this word, or that Matthew himself would have called his Gentile converts "eunuchs."*[1]

Moloney's dogmatic presupposition causes him, without offering critical scholarship, to reject the word on the basis of its crudeness, and argue for celibacy, even though celibacy was not pervasively associated with the eunuch in antiquity. To engage in the story is to debunk these assertions and ask critically: How was the term eunuch to be understood in antiquity? What was the early church seeking to achieve in this narrative? How do the characters and citation blend together in the narrative to create a new symbolic universe? What was the ultimate objective of the narrative? How was the narrative accomplishing this?

It is from this perspective that we make the bold thesis that the story of the eunuch is absorbed in the stories of Jesus, of Israel, of God and functions as a paradigm for Christianity in early antiquity to show that even the most repulsive of characters was accepted in the new eschatological community of Christ-believers.

The Eunuch in Greco-Roman Culture, Society and Literature

The essential story, therefore, flows from an understanding of the character and social location of the eunuch, and the reflection of Tertullian serves as a good point of departure. So, Tertullian wrote:

> *If Philip so easily baptized the chamberlain, let us reflect that there had been interposed a manifest and conspicuous evidence that the Lord deemed him worthy.*[2]

Notwithstanding that Tertullian noted that Jesus and Paul were eunuchs, his statement above raises the question: What would have deemed such a person unworthy? Certainly, if celibacy was the only defining mark of the eunuch, then why the adversity? Traditionally, the eunuch has been identified in terms of his employment, that is, as a court official or chamberlain. Added to this is the interpretation that flows from the etymology of the word; that is, "the keeper of the bed." This interpretation is suspect, since it was widely known that eunuchs were employed in a variety of other offices since they functioned primarily as slaves within the household.

In Greco-Roman society and culture, slaves had no right to the use of their bodies, which belonged to their masters. For a better understanding of this, it is necessary to perform an investigation of secular literature. Results clearly demonstrate that, contrary to popular belief, the eunuch was not necessarily a celibate person. In fact, evidence shows that castration and mutilation were often times linked to pederasty and to same-sex unions. Suetonius, commenting on the life of the emperor Nero, wrote:

> *[Nero] castrated the boy Sporus and actually tried to make a woman of him; and he married him with all the usual ceremonies, including a dowry and a bridal veil, took him to his home*

attended by a great throng, and treated him as his wife.[3]

Here we see the highest official of the Roman state engaging in the practice of castrating a male slave in order to prolong his youthful beauty so as to maximize sexual engagement. Likewise, the use of the eunuch for sexual pleasure is reported in the account of the life of the emperor Titus. So, Suetonius noted that:

> *Besides cruelty, he was also suspected of riotous living, since he protracted his revels until the middle of the night with the most prodigal of his friends; likewise of unchastity because of his troops of catamites (male prostitutes) and eunuchs…*[4]

Suetonius's reference to an action by another emperor, Domitian, affirms that the practice of castration and mutilation was often time for the purposes of sexual exploitation and/or commerce. Evidence from the writings of jurists Paulus and Marcian shows that this practice seems to have continued into the late Roman empire.[5] So, Suetonius writes:

> *[Domitian] prohibited the castration of males, and kept down the price of the eunuchs that remained in the hands of the slave dealers.*[6]

But according to Cassius Dio, that did not mean that Domitian, like Titus, did not engage eunuchs sexually. So, Cassius Dio writes affirming Suetonius on the one hand, but disclosing this reality on the other:

> *Accordingly, though he himself entertained a passion for a eunuch named Earinus, nevertheless, since Titus also had shown a great fondness for eunuchs, in order to insult his memory, he forbade that any person in the Roman Empire should thereafter be castrated.*[7]

The eunuch of antiquity was a public spectacle, a person to be despised, to be excluded, to be derided. He was the laughingstock of the community. So much so that Publius Terentius Afer's play *The Eunuch* was acted twice in the same day and earned more money than any previous comedy of any writer, namely eight thousand sesterces.[8] In an honour-shame culture, the eunuch represented those at the very bottom of the social and cultural system. The eunuch did not have the prerequisites to share in public life; his type was not allowed to participate in the cult and worship of the community.

Several Greek and Jewish writers of the period record these attitudes for us. Lucian of Samosata thought that the eunuch Bagoas should be disallowed from having the chair in philosophy in Athens.

> *It was not at all permissible for Bagoas to lay claim to philosophy and the rewards of merit in it, since he was a eunuch; such people ought to be excluded, he thought, not simply from all that but even from temples and holy-water bowls and all the places*

> *of public assembly, and he declared it an ill-omened, ill-met sight if on first leaving home in the morning should set eyes on any such person. He had a great deal to say, too, on that score, observing that a eunuch was neither man nor woman but something composite, hybrid, and monstrous, alien to human nature.*[9]

Lucian's description of the eunuch as neither man nor woman would seem to construct such a person as a third gender, of ambiguous sexuality. Lucian continued to describe the eunuch as a person who "had been marred from the very first and was an ambiguous sort of creature like a crow, which cannot be reckoned either with doves or with ravens"[10] (in modern parlance, "neither fish nor fowl").

Josephus and Philo noted the attitude of ridicule that pervaded among Greek-speaking Jews of the first century that reflected their symbolic boundaries and codes of purity. So, Josephus wrote:

> *Let those that have made themselves eunuchs be had in detestation; and do you avoid any conversation with them who have deprived themselves of their manhood, and of that fruit of generation which God has given to men for the increase of their kind: let such be driven away, as if they had killed their children, since they beforehand have lost what should procure them; for evident it is, that while their soul is become effeminate, they have withal transfused that effeminacy to their body also. In like manner do you treat all that is of a monstrous nature when it is looked on; nor is it lawful to geld men or any other animals.*[11]

Philo of Alexandria likewise notes that the eunuch was one to be excluded from Jewish worship, even though he admits that such people had mingled in the assemblies:

> *[The Law] excludes all who are unworthy from the sacred assembly, beginning in the first instance with those who are afflicted with the disease of effeminacy, men-women, who, having adulterated the coinage of nature, are willingly driven into the appearance and treatment of licentious women. He also banishes all those who have suffered any injury or mutilation in their most important members, and those who, seeking to preserve the flower of their beauty so that it may not speedily wither away, have altered the impression of their natural manly appearance into the resemblance of a woman.*[12]

While Philo's and Josephus's comments would have been in keeping with the received tradition that encapsulated the story of Israel from a particular point of view, that is, from a dominant reading of the Torah, and which would have been true to the laws of purity found in Leviticus (Lev. 11:9–12; 21:19–20) and the

regulations governing worship in the Jewish Temple to be found in Deuteronomy (Deut. 23:1), they both reflected the contempt and scorn that the character of the eunuch attracted.

Finally, that the eunuch of the text is the male attendant of a female royalty only serves to heighten suspicion. In the contemporary Roman world, male eunuchs were known to engage in non-penetrative sex with women. This form of sexual activity was frowned upon by Roman culture, since it diminished male misogyny. But the eunuch was not concerned with the preservation of manly reputation.[13] Undoubtedly, this too would have contributed to the reading scenario of the character of the eunuch.

The Intertextuality of the Isaianic Citation in Acts 8

In addition to the ways in which the first-century Mediterranean reader of this text would therefore have had reflected on the cultural norms and practices of the day, consideration also has to be given to the intertextuality of the text (Isaiah 53:7–8, Acts 8:32–33) — the text that the author of the Acts of the Apostles has the eunuch read:

> *Like a sheep he was led to the slaughter,*
> *and like a lamb silent before its shearer,*
> *so he does not open his mouth.*
> *In **his** humiliation justice was denied him.*
> *Who can describe his generation?*
> *For his life is taken away from the earth.*

John D.W. Watts, in his commentary on Isaiah 34 to 66,[14] locates these verses in what he designates as the tenth of twelve acts (Isaiah 52:13–57:21), which deals specifically with the restoration pains of Jerusalem. The reading is attributed to the tenth generation and contemporary to the reign of Darius (518–465 BCE).

The citation of Isaiah in the Acts of the Apostles intensified the humiliation of the suffering servant of Isaiah by adding the genitive of the third personal pronoun *(aujtou')* after *(tapeinwvsei)* to emphasize that the suffering is personal, though this pronoun is absent from the Isaianic text. In addition to this, the wider rhetorical contour of Isaiah 56 (52:13–57:21) that deals with the restoration in Jerusalem includes in an unusually way a section that speaks to the restoration than the inclusion of the eunuch in the eschatological community in this way:

> *Do not let the foreigner joined to the LORD say, "The LORD will surely separate me from his people"; and do not let the eunuch say, "I am just a dry tree." For thus says the LORD: To the **eunuchs** who keep my sabbaths, who choose the things that please me and hold fast my covenant, I will give, in my house and within my walls, a monument and a name better than **sons***

*and **daughters**; I will give them an everlasting name that shall not be cut off. [emphasis added]*[15]

It is difficult to read this particular text and not to come to the conclusion that the eunuch *(saris)* is theologically comparable with, adversative to and yet equal to sons (male) and daughters (female), a reading that potentially constructs the eunuch as a third gender.

In this way, the story of the eunuch as an individual is closely embedded in the story of Israel. The pericope from Isaiah, reflects a period of hope for Jerusalem during the reign of Darius/Xerxes 518–465 BCE. The expectation of a reconstituted Temple in which all the old forms of taboos have been removed is affirmed, and a more all-inclusive approach to Temple worship is anticipated. This inclusion covers also the foreigner — the alien in the midst however defined, who is always the concern of Yahweh, who joins himself to the Lord. In first and second Temple Judaism, the former was accepted with much ambivalence. These were gentiles after all, and there were Jews who were not prepared to give them the full covenantal rights. Watts demonstrates this ambivalence by comparing the attitude in Isaiah to that of another contemporary, Ezra, whose policies stood in stark contradiction to those enunciated here.

The Ethnicity of the Ethiopian Eunuch

The eunuch of Acts 8 is a foreigner, an Ethiopian, a person who in contemporary Greek literature shares the same ambivalence. According to Homer, the Ethiopian is blameless, but according to Herodotus, and Pseudo-Aristotle, this ethnic group is to be "held in the least of honour" and "cowardly" respectively. And yet in Isaiah 56, in the story of Israel, the foreigner is described as joining himself to Yahweh, ministering to him — that is performing services in the Temple, loving the name of Yahweh — devoted to him beyond the acts of worship themselves, and becoming his servants.

But the story of Israel in this pericope is one in which the original understanding of Israel as cosmopolitan and ethnically varied is implicit. It functions primarily as a reconstructive narrative of the early confederacy which included persons on the basis of their allegiance to God as a covenanted community. It was this understanding that formed the primordial narrative, for example, in Exodus 19:1–20:21; it is found in the theology of the book of Deuteronomy; and it is the understanding of Joshua 24.

According to Watts, commitment and acceptance of responsibility are to be more important than birthright, and in the same way that Israel-Jacob despised his birthright and was found acceptable, so others are now considered worthy to renter into the covenant relationship. In the same way that Yahweh has repeatedly worked through Israel's and Jerusalem's failure to keep covenant, and in the same

way that Yahweh had to accept their unwillingness to do what he wants, so too Yahweh opens the invitation to all who are committed to doing the will of God, to those who seek after justice, or keep the covenant and the Sabbath.

Accessibility is now open to all. The Ethiopian eunuch, a foreigner of ambiguous sexual identity, the most despised and derided of the social groups, the third gender of antiquity, is the one who is the recipient of God's healing, redemption, restoration and inclusion in the new eschatological community in Isaiah. And this is where the narrative embraces the story of God.

Historical Reality, Theological Interpretation and Conclusion

The story of God is to be understood as a given from the beginning of the pericope in the Acts of the Apostles. But it is the story of God that also drives the core understanding of the text from Isaiah's perspective. God's invitation to the social downtrodden and his universal openness is to be found throughout the Acts of the Apostles (10:34–35, 43; 11:38). And in the case of the baptism of the Ethiopian eunuch, the story of the divine, which is encapsulated in the presence and activity of the Holy Spirit, is not to be underestimated. It is an angel of the Lord that offers the instruction to Philip to intersect the journey of the eunuch (Acts of the Apostles 8:6).

After this imperative, Philip appears on the scene and it is the Spirit, the primary actant in the text, who instructs Philip to join the chariot (8:29); it is in the Spirit that Philip begins to proclaim the good news about the Lord Jesus Christ (8:35); and it is the Spirit that removes Philip from the scene once the baptism had been completed. Implicitly, it is the Spirit that drives the rhetoric and the action of the pericope. But the first-century reader would have also recognized that it is the Spirit that is emphasized in the gospel of Luke.

The Holy Spirit is there in the ministries of John the Baptist (Luke 1:15–17); of Jesus (1:35; 3:16, 22; 4:1, 14, 18; 10:21); in the life of Elizabeth (1:41, 42); Zechariah (1:67–69); the song of Simeon (2:25–35); and in the ministry and mission of the disciples of the Lukan church (12:10–12; 24:49). It is in the Spirit that Jesus commences his ministry in the synagogue, and it is not without significance that the author has Jesus beginning his ministry in the Spirit with a citation from Isaiah, which is a continuation of the theme for the restoration of Jerusalem as a reconstituted Temple city in which pilgrims and devotees are welcome — a continuation of the text the eunuch is reading. It is a text in which Yahweh's anointed messenger proclaims the year of Yahweh's favour. It is not without special reference that people reacted violently to Jesus when they heard his exegesis of the text and sought to kill him, a response that is unique to the Lukan redaction of this pericope.

The themes of Isaiah 61 have been generally identified as synonymous with those of the so-called servants' songs, emphasizing suffering on the one hand but restoration on the other hand. The message in its opening verses is for the poor, the imprisoned, the broken, the disadvantaged, the oppressed, the marginalized, the stigmatized and for those who are exploited; it is not a message for the rich, the Temple authorities, for the social elite. Isaiah brings a message of comfort, of a new attitude and a new spirit of coexistence.

It is this program that Jesus identifies with in his ministry. The story of Jesus is the story of the servant anointed by Yahweh to emphasize the forgiveness of God to all people. The first-century reader would have recognized the characterization of Jesus as the saviour of the lowly, the lost, the marginalized and the oppressed; a Jesus who reaches out to gentiles and Samaritans, to women and the excluded, and to the third-gendered eunuch (Mattew 19:10–12).

The Jesus who condemns greed, the love of money, and worldly pleasures that luxury alone can afford is the one that Luke introduces to his readers in a specific cultural, political and social context. Herod is King, and Pilate is governor of Judea; Augustus and his son Tiberius are the emperor's whose reigns span the life of Jesus; Annas and Caiaphas are the high priests. All of these characters tell their stories and create the apocalyptic environment that allows Luke to recognize Jesus as the messiah, and to construct his good news of comfort and salvation, his message of victory.

Philip's question about the eunuch's understanding of the text is the opening through which the multi-layered story of the text will be explained and is to be understood. The response of the eunuch is an open invitation, on the one hand, for a greater understanding of the scriptures, but, on the other hand, it serves as a polemic against the worship of Jerusalem (8:27). For the eunuch to be coming from worship and yet seeking such understanding drives this interpretation.

The passage that the eunuch is reading is extremely selective in that it includes the story of Israel, the story of Jesus and the story of the eunuch. These three stories are simultaneously included since the metaphor of the sheep is easily transferred to Israel, Jesus and the eunuch. It is the story of the suffering innocent, a narrative that applies to Jesus, Israel and the eunuch simultaneously. Israel, Jesus and the eunuch at some time have each experienced humiliation and the denial of justice; their lives have been taken up from the earth.

Phillip's response is to proclaim to the eunuch the good news of Jesus, but that is to be reconstructed by Luke's narrative as stated in his first work and already discussed above. Luke invites us into the complex symbolic universe of the fictive novelty of the Ethiopian eunuch in such a way that the most repulsive characteristics of humanity in the Greco-Roman era are brought to the fore of the

implied reader. Contrary to the received Jewish tradition reflected by Josephus and Philo of Alexandria, these purity boundaries are erased in the new eschatological community.

The gender identity of the eunuch, his occupation with a female royalty, his ethnicity and his difficulty in understanding the festivals of Jerusalem as they related to the lived reality of his environment coalesce to create a complex character and narrative that defy the traditional and received boundaries of purity, but demonstrate that the new eschatological community of the church is not to be constrained by anthropological/ideological purity laws. For the author of Luke and Acts, this reconstitution and/or displacement of the traditional with the new will be played out in the pericope of Peter's visit to the conversion of the Roman centurion Cornelius (Acts 10 *passim*).

The eunuch readily identifies with the story of the good news of salvation that has been brought to all humankind in Jesus Christ. It creates in the eunuch such excitement to be a part of this new community, that when he sees water, he seeks baptism — inclusion in the spirit-filled community of the marginalized, the outcast, the humiliated, the outsider, whose Lord, on the evidence of the Gospel, inverts social expectations and norms.

If the good news of Jesus is as Philip has described, then what is to prevent this eunuch who is a foreigner, an alien, a despised and marginalized character, one who is of despicable colour of skin, one who is excluded from the Temple and from civil office, one whose gender is neither male nor female, from being included in the new eschatological community of the baptized — so the question *tiv kwluvei me baptisqh'nai;*. The fact that he is an outsider? A eunuch? A foreigner? An Ethiopian? The third gender? Throughout the ages, persons have been discriminated against on the basis of race, gender, ethnicity, etc. Are there lessons in this reading of this pericope for the church in the twenty-first century in the Caribbean?

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[1] An example of the doctrinal and dogmatic bias of an exegete is seen in the article by Francis J. Moloney, "Matthew 19,3–12 and Celibacy. A Redactional and Form Critical Study," J*ournal for the Study of the New Testament* 1, 2 (1979): 42–60 at 50–51.

[2] Ante-Nicene Christian Library, "The Writings of Quintus Sept. Flor. Tertullianus, Volume 1," in A. Roberts and J. Donaldson (eds.), *Translations of the Writings of the Fathers Down to A.D. 325, Volume 11* (Edinburgh: T. & T. Clark, 1869), p. 252.

[3] Suetonius, "The Life of Nero, 28," in J.C. Rolfe (trans.), *Suetonius II* (Harvard University Press & G.P. Putnam's Sons, 1920).

[4] Suetonius, "The Life of Titus, 7," in J.C. Rolfe (trans.), *Suetonius II* (Harvard University Press & G.P. Putnam's Sons, 1920).

[5] Paulus, *Sent.* 5.23.13; Dig. 48.8.3.

[6] Suetonius, "The Life of Domitian, 7," in J.C. Rolfe (trans.), *Suetonius II* (Harvard University Press & G.P. Putnam's Sons, 1920).

[7] Cassius Dio, "Epitome of Book LXVII," in E. Cary and H.B. Foster (trans.), *Roman History, Volume VIII: Books 61–70,* Loeb Classical Library 176 (Cambridge, MA: Harvard University Press, 1914), p. 318.

[8] Suetonius, "De Vita Terenti (The Life of Terence)" in J. Rolfe (trans.), *Ancient History Sourcebook: Suetonius: De Viris Illustris, c. 106–113 C.E.* Internet History Sourcebooks Project. Available at https://sourcebooks.fordham.edu/ancient/suet-viribus-rolfe.asp.

[9] Lucian, *The Eunuch,* 6–11.

[10] Ibid.

[11] F. Josephus, *Antiquities of the Jews – Book IV,* 8, 40, p. 290–291. Available at https://penelope.uchicago.edu/josephus/ant-4.html.

[12] Philo, The Special Laws, 1, 324–325.

[13] M. Kuefler, The Manly Eunuch: Masculinity, Gender Ambiguity, and Christian Ideology in Late Antiquity (Chicago, London: The University of Chicago Press, 2001), p. 98.

[14] J.D.W. Watts, World Biblical Commentary, Vol. 25: Isaiah 34–66 (Thomas Nelson, 2005).

[15] Isaiah 56:3–5 (New Revised Standard). See, for example, Lucian of Samosata above.

The Church's Role in LGBTI Decriminalization and De-stigmatization: The Perspective of a Barbadian LGBTI Advocate

Alexa D. V. Hoffmann

In my seven years of LGBTI advocacy, I have had sufficient engagement with the religious community to suppose that religion plays a considerable role in the de-stigmatization and ultimate decriminalization of lesbian, gay, bisexual, trans and intersex (LGBTI) people, especially in the Caribbean region. During this time, as well as the years prior, I have encountered mindsets from various sects of Christianity, including the evangelical community, which I have found to be one of, if not the most dangerous opponents to LGBTI equality and freedom. Regrettably, many of the attitudes displayed by the religious community have been negative, due to both biblical tenets as well as a desire to cling to myths and misconceptions that serve to negatively portray the LGBTI community and more or less offer an "excuse" to mistreat its members.

To begin, I must offer some of my own background and what drives me to advocate for what I call the full social and legal inclusion and integration of LGBTI people. I am a 26-year-old trans woman, born and raised in Barbados. In Barbados, religion has always been a fairly big deal, influencing everything from children's choices in friends to education, politics and the law. Even those who do not identify as religious often make religious references in their everyday interactions, and more critically, in their attitudes towards LGBTI people. I have seen religion used as an emergency brake to nip undesirable behaviours in the bud, an intervention tactic against an established situation, or a perfunctory practice designed to keep up appearances. I have particularly seen religion used as a shield against a perceived social threat. I want to use this discussion to explore some of the ways in which I've seen these tactics employed, and even explain how they could be used instead to create a better society for an already heavily marginalized sector of Barbados' population (and by extension, the wider Caribbean region).

In Barbados, religion has had its way with the legislature and the political atmosphere, resulting in such laws as Sections 9 and 12 of the *Sexual Offences Act,* which criminalize "buggery" and "serious indecency," the latter of which is understood to be any act involving the genitals "to arouse or gratify sexual desire." Politicians have cited religion in their ardent calls to keep those laws on the books. I have also seen it used to bolster negative attitudes openly displayed by those same politicians. In 2012, then British Prime Minister David Cameron put countries criminalizing same-sex intimacy on notice when he advised that British

financial aid would be redirected away from the governments of those countries. In response, then Prime Minister and head of the Democratic Labour Party (DLP) Freundel Stuart took to the media to emphatically state that Barbados, being "a Christian country," would not be dictated to by foreign powers such as the United Kingdom. Mr. Stuart then continued that the aggrieved provisions in the *Sexual Offences Act* were a necessary reflection of the country's belief in the supremacy of God, and that doing away with those section would do more harm than good.

A similar line was used in 2014 when amendments were being considered for legislation protecting victims of domestic violence. Upon realizing that a gender-neutral law would likely benefit same-sex couples in abusive situations, the then Minister for Drainage and the Environment, Dr. Denis Lowe, emphatically stated that he would sooner resign from his post than allow it to pass. After a number of LGBTI advocates spoke out against Dr. Lowe's statements, with some even suggesting that he should indeed resign, he held a press conference where he invoked his Christian beliefs, asserting that, like the colour of his skin, he could neither change or walk away from his beliefs, and insisted that he was being victimized by the LGBTI community. In 2015, when the amendments were passed, vestiges of the evangelical figment concerning a "Gay Agenda" reared its head when the former Minister for Youth, Culture and Sport, Dr. Esther Byer-Suckoo, warned against using the law to protect same-sex couples, advising that Barbados should be careful as "the agenda [in the legislation was] very strong."

When the time came for the various political parties and candidates to start campaigning for the General Elections, the DLP made inferences that it was taking a religious hard line where the LGBTI community was concerned. The former Minister of Finance, Christopher Sinckler, declared that the campaign was going to be fought on a "platform of morals," and threatened that, "who lives with who [was] going to come up," implying that the sexual and romantic lives of high-profile individuals, even political opponents, were likely to be used as fodder to gain votes. Some days before Election Day, Dr. Lowe, the former Minister for the Environment and Drainage, took to the microphone at a crowded rally and shouted homophobic slurs about the LGBTI community and now Prime Minister, Mia Mottley, calling her a "self-confessed wicker"[1] and portraying a situation where, should Ms. Mottley come to power, her administration would legalize same-sex marriage, giving rise to "bullers marrying bullers and wickers marrying wickers." Many DLP supporters took to the streets, plastering posters on telephone poles and highway lampposts and even bearing placards warning readers not to allow Ms. Mottley's Barbados Labour Party (BLP) to come to power as this would spell certain moral decline for Barbados, a situation only the DLP was equipped to prevent.

In another incident, just weeks after the May 24th general elections that saw

the DLP lose to the BLP by a landslide, a calypso song entitled "Sex Change" made its debut on the radio. Written and performed by Paul "Billboard" Murrell, the song made many callous statements regarding the gender identities and expressions of trans people, focusing on crude references to the surgical procedures we may undergo during our medical transition. The song's scathing refrain, "stop the disgrace, know your place and do not fly in God's face," was aired for a number of months and created some uproar amongst both religious sectors and LGBTI advocates alike, with the former siding with the song's message, and the latter asking that it be pulled from the airwaves. Searches for the song online pointed to a YouTube video depicting a unisex bathroom symbol with the "No" symbol superimposed on it. The video description read, "God made man and woman. Anyone saying otherwise is madness!" When confronted by the media about the song, Mr. Murrell simply said that he was singing factually and that his religious beliefs inspired him to write the song, as he felt that trans identities and gender expressions went against God's design.

Where the Church is concerned, I previously stated that I've found the evangelical community to be the most dangerous opponents of LGBTI equality in Barbados and the wider Caribbean. That is because I've witnessed, sometimes first-hand, the tactics that group has employed in response to LGBTI advocacy. In May 2015, I moderated a panel discussion entitled "When is Gay Too Gay, and Should We Try to Hide It?" This panel discussion was held at the University of the West Indies' Law Faculty Moot Court, and was open to any individual who had an interest in attending. Panellists included my close friend, Attorney-at-Law Maurice Tomlinson; his husband, Capt. Rev. Thomas Decker (at that time, he was not yet a Captain); President of the National Organisation for Women, Ms. Nalita Gadjadhar; and Deputy Dean of Law, Attorney-at-Law Westmin James. The panel discussion went rather smoothly until we opened the discussion to question from the floor, at which point we noticed that a number of evangelical ministers and parishioners were in the audience. They immediately attempted to negate all of the discussions by repudiating Rev. Decker's remarks in favour of the LGBTI community (and also as a gay man himself), Nalita's unabashed support of the LGBTI community and how there was intersectionality between the LGBTI community and women's rights, and Maurice and Westmin for supporting something illegal and punishable by life imprisonment (referring to the *Sexual Offences Act*). The remarks rose to such a point that not only did Nalita demand I bring order to the issue as she was tired of the religious community "hijacking panel discussion forums to preach and distract the conversation," but I found myself calling for campus security and warning that further attempts to hijack the discussion or harass LGBTI people with religious comments would result in those individuals being removed from the Moot Court.

After these events, the president of Family, Faith, Freedom Barbados, Dr. Veronica Evelyn, wrote a stern letter to the editor, in which she not only fumed about being told to refrain from trying to proselytize her religious beliefs, but asserted that the panel discussion was an effort by a group of foreigners to impose same-sex marriage on Barbados, despite no such references ever being made during the discussion. I even found myself being plastered with the label of "foreigner," which I presume was based on my German surname and the fact that I do not speak with the typical "Bajan" accent. Dr. Evelyn never got over this perceived slight, as she raised the issue again in another letter to the editor on August 4, 2019, this time accusing me, whom she now called "the sole Barbadian on the panel," of instructing the panel not to entertain any questions of a religious nature. How ironic this behaviour would prove to be, as Dr. Evelyn, herself a foreign national, is also part of an evangelical group called "Caribbean Cause," which only seems to have a voice when matters concerning the LGBTI community arise, and whose members reside in Jamaica, Belize, Trinidad and Tobago and the Bahamas, among other Caribbean territories.

During the summer of 2016, I was invited by a former friend to attend a panel discussion on the "Church and the LGBT Movement" at a Nazarene church. Curious to see how such a panel discussion would play out, I attended and found that the event was very carefully engineered. All of the panellists were evangelical ministers, and with the exception of myself, a few other well-known LGBTI advocates and some allies, all of the people in attendance were members of the ministers' respective congregations.

Nearly all of the presentations given at the panel discussion were designed to portray the LGBTI community, its advocates, and allies as somehow a threat to society — the opening slide of one presentation, given by the Reverend Dr. Lucille Baird, depicted a group of people, all with angry facial expressions, and bearing various placards and flags relating to the LGBTI community. Dr. Baird went as far as to say that it was a deliberate choice for a person to be LGBTI, that it was a myth that heterosexual people can contract and pass on HIV, that any academic information that contradicted these ideas was in fact "bogus research" paid for by wealthy entities, and that there was an active "Gay Agenda," part of which was to make all children LGBTI through indoctrination practices in schools and on television. Interestingly enough, Dr. Baird offered no references, even though she peppered her presentation with sporadic exclamations of "I know what I'm talking about, I've done my research!" The floor opened to nary a question except those from the LGBTI advocates and allies, and when I challenged the presentation's assertions about sexuality, I was immediately rebuffed by a woman from Dr. Baird's congregation, who, after going into her own story of being a "former lesbian," insisted that my gender identity was the result of sexual abuse that she

was sure had happened, "even if [I can't] remember it." This is a tactic that I later realized is often used to convince people that the sexuality or gender identities of LGBTI people were somehow influenced by severe trauma. My other efforts to challenge the notion that LGBTI people deliberately choose their sexuality were met with dismissive groans from the congregation, who found the reality of a man or a woman not being sexually attracted by the opposite sex ridiculous.

I ultimately confronted Dr. Baird face-to-face at the end of the discussion and asked her to name her sources about there being a Gay Agenda and the idea of HIV transmission among heterosexuals being a myth. She again attempted her indignant response about having done her research, but when I asked to see the papers she had waved about earlier while making her assertions, I observed that her eyes widened almost in horror, as if she was realizing that she was going to be caught. When I further pointed out to her that heterosexual HIV transmission was in fact a very real thing, she attempted to screw up her face in scepticism. However when I mentioned the fact that many children have been diagnosed with HIV at birth, having contracted it from their mother in utero (which would often mean that the mother contracted it from a male partner), she became visibly uncomfortable. No sooner had I suggested that she contact the National HIV/AIDS Commission in order to get accurate information about HIV transmission, as well as take the time to interact with members of the LGBTI community outside of her congregation, Dr. Baird cut the conversation short, abruptly redirecting her attention to one of the other ministers from the panel and giving me the cold shoulder.

On November 9, 2019, Family, Faith, Freedom Barbados and Caribbean Cause came together to launch a public rally, entitled "Understand, then Take a Stand," which lambasted a petition that I and two other Barbadian citizens made to the Inter-American Commission on Human Rights (IACHR), and making references to other efforts throughout the region where LGBTI advocates initiated litigation, whether domestic or international, to decriminalize same-sex intimacy. A local attorney-at-law was even called in for the rally, and he engaged in a fiery tirade about how he believed the IACHR's Court counterpart was "out of order" for supporting LGBTI equality, even though my petition had yet to get a response from the Government of Barbados or even have a hearing date scheduled, more than a year after it was first filed. Other panellists went as far as insisting that the IACHR was a United States-based organization, even though anyone familiar with the American Convention on Human Rights and the Organization of American States (OAS) would find that the "American" nomenclature is a geographical reference as opposed to a national one.

One other speaker spent a few minutes on how the two organizations were rising up against concerning developments in the United States and parts of Europe, where, according to them, Christian employees could find themselves denied

housing, mired in lawsuits and dismissed from work because their "difference of opinion" was labelled as hate speech and bigotry. The reality is that when individuals face such professional adversity, legal conflict, or domestic crises, it is almost always because of their own unnecessarily discriminatory practices, even verbal harassment meted out to members of the LGBTI community — ironically the same problems inflicted upon the LGBTI community, which evangelical groups claim to be worried about happening to them. Dr. Evelyn herself gave a speech appealing to the Government of Barbados to either ignore my petition altogether, argue stridently against it, or even ignore or appeal "any" decisions arising from the IACHR or any other judicial body that hears similar cases to my petition. In her speech, she revealed that she was certain my petition would be successful, and accused the IACHR and other courts that have ruled in favour of LGBTI people of "judicial activism." She then introduced Jamaican LGBTI opponent Dr. Wayne West, who, in his speech, also slammed the IACHR for entertaining my petition and for its Advisory Opinions regarding same-sex marriage and affirming the right of LGBTI people not to be discriminated against on the basis of their sexual orientation and gender identity. He even played back a number of video clips featuring members of the IACHR who made statements affirming the rights and freedoms of minorities, and despite their clear statements and explanations, told the crowd that the statements made in the video meant something completely different. He then shifted the subject to how laws such as Barbados' *Sexual Offences Act* were necessary as a matter of public health and safety, going into theories linking the declassification of homosexuality as a mental illness by the American Psychiatric Association to the advent of the HIV and AIDS crisis, and scatological details claiming that certain bacteria in the rectum caused HIV, that engagement in anal intercourse invariably resulted in bowel incontinence, and that health agencies all over the world were dealing with exceptionally high cases of HIV among homosexual men compared to heterosexual men, but deliberately under-reported their figures due to strong-armed tactics by LGBTI advocates.

Even this year, evangelical sectors continue to misrepresent the fight for LGBTI equality and inclusion and position the issue as one that is to be of great worry for Christian-minded people. In Belize, years after striking down section 53 of its Penal Code and declaring any laws criminalizing same-sex intimacy as unconstitutional, work is now underway to enact legislation intended to provide equal opportunities to all members of society, including the LGBTI community. The Equal Opportunities Bill seeks to prohibit discrimination in employment, housing, healthcare, access to justice and various other aspects of society on the basis of a person's sexual orientation and gender identity, among other protected characteristics. Unfortunately, Caribbean Cause and other evangelical groups have attempted to misrepresent the Bill and any other similar legislation as be-

ing a threat to Christian life, implying that, should the laws come into effect, Churches may find themselves being disbanded and members arrested for practicing religion in their homes. Some government organizations even considered not supporting the legislation out of fear that the focus on LGBTI issues by the evangelical sector would tarnish them. However, after some local and regional advocates and organizations issued public statements in support of the Bill, organizations such as the National AIDS Commission assisted in clearing the air and assuring citizens that the Bill protected all citizens, including Christians who wish to share their beliefs with others.

Amidst all of the havoc wreaked by the evangelical community and other like-minded religious sects and followers in the Caribbean, one cannot help but observe that a much simpler effort has been foregone — the effort of simply placing oneself in another's shoes and realizing the importance of treating others with genuine love, compassion and kindness. When a religious group calls for laws criminalizing a group of otherwise law-abiding people for what they do consensually and in private to either be placed on the books or retained, there is a lack of love and compassion for a fellow human being and, most regrettably, a clear sense of regression. That one can call for a situation where a person might face life in prison, yet dread the possibility of being sued by that person, or even fear suspension or dismissal after being held to account for treating that person unfairly is a severely ironic scenario.

Religious leaders, and by extension, the Church as an umbrella, have spent many years teaching us, from the time we were small children, how to love one another — even drilling the Golden Rule into our minds, to "do unto others as you would have them do unto you." It seems that at some point, many of us have conveniently dispensed of the Golden Rule and replaced it with a rule to visit harm on those we do not understand, yet insist that such detriment never befalls us. Such is this erosion of an age-old teaching that, even when members of the Church and the wider society extend an olive branch, a helping hand, or even a pair of outstretched arms to the LGBTI community, to view us through eyes of love, to think of us with a mind of kindness and hold us in compassion-filled hearts, many choose to view this gesture with sheer contempt and open repudiation. These same individuals who repudiate the idea of unconditionally loving, accepting and embracing members of a community who are routinely marginalized seem to take solace in reinforcing that very marginalization. They, like the evangelical leaders, satiate themselves by spreading statements, even blatant falsehoods, that negatively portray the LGBTI community and offer some justification for their poor treatment.

Regrettably, those who taught us in the beginning to treat others the way we wish to be treated have somehow either lost their voice or otherwise found them-

selves unable to get that original message to stick once again. I sincerely hope that the time will come when these evangelical minds, which so ardently seek to erase the existence of a group of people who have caused them no harm, come to understand that the life we seek, the privileges and freedoms we hope to enjoy, are no more than what they have taken for granted, and that the lessons of love and compassion first learned when we were all children become an old habit, virtually indestructible and simply unforgettable.

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[1] "Wicker" and "buller" are derogatory terms used in Barbados and other parts of the Caribbean to refer to lesbians and gay men respectively.

Sex and Sexuality, Particularly Homosexuality, in Relation to the Christian Church and the Evangelical Traditions in the Caribbean

George Garwood

Bearing in mind the interference and destructive developments of COVID-19, we recognize that life must go on. And this life, includes discussions and decisions about justice: including not only Black Lives Matter, civil rights, and human rights, but also many other kinds of rights.

But the rights I am to talk to you about today are still the pressing and insistent ones about gay and lesbian relationships. Such rights, although they seem to have taken a backseat to the pandemic that rages, are still never far away from our personal and corporate consciousness; and such rights, or denial of these rights, affect all of us.

So let us briefly look at the LGBTQ+ landscape. On September 15, 2020, a Barbadian newspaper *(Barbados Today)* reported that the government of Barbados revealed that it is prepared to "recognise a form of civil union for couples of the same gender" to ensure that no human being in Barbados will be discriminated against in exercising civil rights that ought to be theirs.

But there was a stipulation that the government would accept and be guided by the vote of the public. In other words, a referendum will be held on this proposal. But this referendum itself poses a problem: what if the referendum goes against human rights principles and the right to live without discrimination? What then does the government do based on its stated intentions below?

One of the reasons the government gave for being willing to accept civil unions for same sex couples is that "legal systems of modern societies recognise many different forms of human relationships and Barbados was now 'increasingly finding itself on international lists,' including within the multilateral system, which identify the country as having a poor human rights record."

However, the government recognized that such a plan "will attract controversy. Equally, it is our hope that with the passage of time, the changes we now propose will be part of the fabric of our country's record of law, human rights and social justice."

So the government of Barbados says it recognizes many different forms of human relationships and wants to designate certain legal and political legitimacy to such forms of human relationships — in this case, to civil same-sex relationships.

Now, a significant section of Barbados that prides itself in being very religious has forcibly come out against the intentions of the government to recognize civil same-sex relationships.

So, for instance, the Anglican Bishop of Barbados, Reverend Michael Maxwell is adamant that while his denomination understands that the government's recent recognition of same-sex civil unions may be a stance against discrimination, gay relationships still would not be backed by his church.

The bishop goes on to say that the Anglican Church in Barbados and the rest of the Province of the West Indies remained fortified in its position stemming from a decision of the 1998 Lambeth Conference of Anglican bishops in England that marriage is a lifelong union of a man and a woman. "[W]e continue to follow what is the ruling of our Lambeth Conference which is a conference that is held by all of the bishops of the world coming together. They would have made a statement abiding by the principles that we understand Scripture outlined to us of the fact that a marriage is really between a male and a female. It is the best arrangement towards family life," Reverend Maxwell declared in another *Barbados Today* article.

"Barbados is on the wrong road," say Jamaican church leaders. So the president of the Jamaica Association of Evangelicals (JAE), Dr. Peter Garth, speaking to the *Jamaica Observer,* says:

> *"While there are some issues that there is a divide when it comes to the Jamaica Evangelical Alliance, I can speak clearly and loudly regarding the position of the evangelicals [on this issue]. We hold to the biblical position, morality does not evolve, and three thousand years from now, if the Lord tarries, we will have the same position."*

Likewise, the chair of the Jamaica Pentecostal Union Apostolic (JPUA), Reverend Major Canute Chambers, speaking on the matter, said, the JPUA was unwavering in its stance: "To any well-thinking servant of God who believes the word of God and stands by it, homosexuality is not an option. It is something that is abhorred. […] But as for me, and I believe I speak for the entire JPUA, we are completely against same sex marriages or unions of any kind," he told the *Observer.*

But a minority of other people in Barbados are supportive of the government's move. In an online comment responding to the *Barbados Today* article, one person declares: "We must remember that Barbados is a SECULAR country NOT a THEOCRACY. Our state apparatus does not align itself to any particular religious group."

Another supporter responding to the same article exults: "Congratulations! Barbados is finally coming into modern times. LGBTQ persons are humankind too. Discrimination against others is unacceptable. Hypocrisy is rife in Barbados. As your bible states: 'Let him without sin, cast the first stone.'"

However, in the main, more people disagreed with, and were hostile to, the government's proposals to recognize same-sex unions than were for it. Not surprisingly, the dissenters usually quoted the Bible or gave religious reasons for denouncing the government's attempt to bring about civil unions between same-sex couples.

These are the same kind of theological arguments that have been advanced by many in mainline Christianity to denounce and even criminalize homosexual activities between consenting adults. This homosexual opposition is seen in not only Barbados, but also the wider Christian and non-Christian communities throughout the Caribbean.

However, despite the Evangelical churches' and other conservative Christian organizations' enmity towards the LGBTQ+ community, legal measures are taking place or under consideration to decriminalize or make less onerous the numerous burdens placed on the homosexual community.

For instance, in 2018, a Trinidad and Tobago judge ruled that homophobic laws were unconstitutional. This ruling, which declared sections of the *Sexual Offenses Act* unconstitutional, may soon lead to decriminalizing gay sex. The High Court issued a final ruling, repealing sections 13 and 16 of the *Sexual Offenses Act,* which criminalized gay sex between consenting adults.

Also, in Belize, same-sex sexual activity was illegal until 2016, when the Supreme Court declared Belize's anti-sodomy law unconstitutional.

On December 30, 2019, in *Caleb Orozco v. Attorney General of Belize,* the Belize Court of Appeal upheld the earlier 2016 decision of the Chief Justice of Belize, finding the criminalization of homosexual conduct to breach the prohibition on sex discrimination set out in the Constitution of Belize.

This ruling represented a major victory for LGBTQ+ persons in the Caribbean. The Court also held that such criminalization breached the right to freedom of expression enjoyed by all LGBTQ+ persons and endorsed the earlier findings of the Chief Justice that criminalization violated the rights to privacy, dignity and equality before the law, all protected by the Constitution.

Although many conservative Caribbean religious leaders and conservative legislators are hostile to homosexuality and same-sex marriages (as are some of their fundamentalist counterparts in many other non-Caribbean countries), a considerable number of Christian denominations are now open to accepting LGBTQ+ practitioners.

For the thesis of my original speech, which was that gay rights are indistinguishable from civil and human rights, I posed the following questions: Who is it to decide and determine our sexual orientation or preferences? Is it the church, the government or some other impersonal or coercive entity? Or is it we, who are the sole agents of our bodies?

I went on to suggest that in our time and in our cultures, there was a time (and still is) when skin colour, certain physical or mental disabilities, or gender differences were (and still are) used as tools to exclude people from the general society; for instance, denying them voting rights, equal opportunities in housing, employment and so forth. But still in several Western cultures and non-Western societies, and sadly in many Caribbean churches, discrimination and animosity remain towards the LGBTQ+ community.

So same-sex relationships, including marriages, between consenting adults cannot be categorized as a crime like rape, incest or such other acts of sexual or predatory violence against the individual. The time has long gone, whether we like it or not, to recognize the wide spectrum of sexuality and gender identities that exist.

I conclude my discussion by saying that there are evident evolutionary reasons for sexuality in both the human and animal species. Sex and sexuality are complex existential human behaviours — I dare say, even God-given ones.

So, in the final analysis, nature ensures a sustainable and equilibrious world through sex and sexuality, including bisexuality, homosexuality and heterosexuality.

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The Long Road from Decriminalization to Equal Marriage: Civil and Religious Activism for LGBTI+ Rights in Mexico

Carlos Navarro Fernández

The Decriminalization of Same-Sex Activity: A Liberal Victory

When we Mexicans busy ourselves with armed internal conflict, we usually wrap it up by means of a new Constitution — so it was in 1824, after gaining independence from Spain. We did it again in 1857, once the War of Reform was done with, and we sure repeated the whole process in 1917, as the Mexican Revolution claimed victory and established the new regime and laws that rule us to this day.

Let us set our eyes on the Constitution of 1857, which was the starting point of the War of Reform. This was a conflict by which liberal and conservative forces clashed to determine how much power the Roman Catholic Church should wield within the Mexican political system. After three years of bloody battles, the liberals were victorious in 1860 and confirmed the establishment of a republican political system that decidedly separated the state from the church. It was quite an achievement, as many other countries around the world know too well. Throughout Mexican history after independence, the Roman Catholic Church has truly been a force to reckon with.

The dominance that the Roman Catholic Church exercised for centuries in Mexico is no surprise when we consider 300 years of Spanish colonial rule. Spain's domination over Mexico, and most of the rest of Latin America, came "with the sword and with the cross," as historians now put it. In the mid-nineteenth century, the victorious liberals sought a modern, civil, lay state for all Mexicans to benefit from. Before the War of Reform, the former New Spain was practically a theocracy. New parents did not go to city hall to get a birth certificate; they went to the local parish to get a baptismal registry. No Mexican before 1860 could go to a bank to request a loan; it was the local church that provided those. And, of course, when the time came to get married, it was the Catholic clergy who, in God's name and under his authority, approved of and licensed the life you would hence lead with your new spouse forever thereafter. So it was with most "public affairs" for Mexicans for many decades, even well into the twentieth century.

Next time you visit Mexico City and stroll down its famous Promenade of the Reform — the main thoroughfare on which major hotels, monuments, embassies, museums and the financial district are located — look closely at each of the many bronze statues that line its sides. Each one of those liberal individuals played a

role in bringing relevant freedoms to the citizens of the country. Mexicans hold a debt of gratitude to each one of them.

I bring up this short period in Mexican history, and its immediate results, simply because it is the one that opened the doors for the Congress of the country to decriminalize same-sex activity in 1871.[1] Never since has there been any further debate in Mexican law, or in its political processes, as to whether consensual same-sex activity between adults should be considered a crime or outlawed in any form. The Constitution of 1917 added much-demanded social justice articles but never touched on this issue.

This is also a good story to discover why Mexico is known to be a country with excellent legislation, with very modern and progressive laws in its books, but which often suffers from poor implementation and haphazard enforcement. While still viewed mostly from a liberal-conservative perspective of opposition — with much discrimination and ignorance in the mix — the issue of same-sex activity, and of equality for LGBTI+ individuals, would not strongly reappear in the country's political debate for at least 100 years.

The Long Road to Marriage Equality in Mexico

> *"Even cockroaches were given family rank now because they live under the same roof; if a cat, a dog, two lesbians and the rest live together, it's a family."*
>
> —Mexican Cardinal Javier Lozano Barragán, Vatican health minister, October 2004[2]

The walk of a few blocks that my husband, Eduardo, and I took down to the local civil court to get a marriage licence, on November 25, 2010, in the Mexico City Roma neighbourhood where we lived, seemed easy and short enough. It was similar to what heterosexual couples have done for centuries, in hundreds of countries, under various political regimes and religious establishments. For us, that event 10 years ago had never really been in our plans. By the time we faced the judge and signed the official documents we had been together for almost 14 years, and it had never occurred to us to, well, stand before a judge to get married. That was not something homosexual couples in Mexico did or planned for. Even so, the ink on the Mexico City law that had permitted such a happening to occur had barely dried and here we were, holding hands and saying, "I do." The 75-year-old presiding judge, whom we met only a few minutes before the ceremony, was exceptional. "I have only three recommendations to give to you," he said solemnly. "Love, love, and more love. That is all you will need for this marriage to be successful."

Our story is very different from those of some other LGBTI+ couples who have told us how — under the same law — they were forced to stand before a

Mexico City judge who proclaimed hither and thither: "Let it be known that I am only presiding over this ceremony because the law so dictates. Let it be clear, also, that I do not agree with it in the least." And from there started an awkward formality that left no one truly satisfied and that unfairly tainted a marriage just begun. These sad occurrences still take place in cities across the many states that have now legalized equal marriage in their jurisdictions.

Now, don't get me wrong, we are not yet in paradise, and not everything started in 2009 with the passage of this Mexico City law. The LGBTI+ movement has been alive and well for many decades in my country. In fact, just a few months before Eduardo and I walked down the aisle in 2010, Mexico City held its 32nd annual Pride parade. At the time of the first such parade, in 1979, getting rights in place for LGBTI+ individuals, including equal marriage, seemed attainable in the distant future; however, achieving that goal would still take a lot of time, much struggle, and plenty of tears.

By the time our wedding ceremony was over, and it was time to eat and drink and celebrate, we made it a point to lift our glasses and propose a toast to honour all those brave Mexicans who marched, raised their voices, and openly showed their faces to pressure the Mexico City Legislative Assembly to pass an equal marriage bill. We were fully conscious that had it not been for their efforts, of which we were never a part, we would not be officially joining our lives before the authorities of our country's most important city. It was a toast of gratitude that made me realize that we must all contribute; we must not remain silent. When setting my eyes on our brand-new marriage licence, I confirmed that we are all called to speak up courageously to truly make a difference, wherever in the world we may happen to reside.

This sudden discovery has taken me to roads of activism that I was, again, not planning on. One has been in government, the other within the Roman Catholic Church itself. They have both been challenging but they have also provided me with rewarding experiences and immeasurable personal growth. In both, I have also had the opportunity to contemplate up close the larger-than-life influence of the Roman Catholic Church in my country, War of Reform notwithstanding. Let me share them with you some aspects of this activism.

A Tale of Two Presidents

> *"Why does the church oppose the president's bill that promotes equal marriage? The human body is not designed for homosexual relationships. Women have a cavity specially prepared for sexual intercourse that is lubricated to facilitate penetration, to resist friction, to secrete substances that protect the female body from possible semen infections. But the man's anus is not*

designed to receive, only to expel; its membrane is delicate, it tears easily, and lacks protection against external agents that could infect it. The member that penetrates the anus injures it severely and can cause bleeding and infections."

—Norberto Rivera, Cardinal and former Archbishop of Mexico[3]

The bill approved by the Mexico City Legislative Assembly in 2009 legalizing equal marriage in the capital city was bound to be controversial and bitterly opposed. Such a piece of legislation could not survive in this mostly Catholic country, right? In fact, Mexico is the second-largest Catholic country on earth, behind only Brazil. What were those leftist local legislators up to? President Felipe Calderón was not happy. This right-wing president — and the many Catholic conservatives who supported his administration — would have none of it. The leftist-leaning progressives infecting the Mexico City government would undoubtedly be defeated. So what better option than to call on the Supreme Court of Justice of the Nation to rule on this most unpleasant new piece of legislation? Surely they were wise enough to know the difference and uphold the family values that a majority of Mexicans held dear. The president ordered his legal counsel and the country's attorney general to draft and file a lawsuit before the Supreme Court arguing that the said local law was unconstitutional. He expected no less than an easy, prompt majority ruling in his favour.

God undoubtedly has her ways. Her instruments and her means of bringing about justice and a piece of her realm are often odd, unexpected, and difficult to understand. "It's complicated!" as we now often affirm in many a social media post. It would be through this presidential lawsuit that the Mexican Supreme Court would not only eventually rule that the new equal marriage legislation passed by the Mexico City Legislative Assembly was fully constitutional but also order all other states in the country to amend their civil codes to effectively grant the right of marriage to any two citizens, regardless of their gender or sexual orientation. The ruling was clearly not in favour of the former president or his coalition. What has followed has been the slow process by which each state will amend its own civil code to allow equal marriage. It has been a long, tortuous road with many LGBTI+ people having to sue state governments to finally be able to marry. As of December 2019, out of the 32 Mexican states, 17 now allow equal marriage within their jurisdictions, 12 of those through updated laws, and five by way of civil lawsuits that are promptly resolved in their favour.[4]

More at the centre of the political spectrum, President Enrique Peña viewed these social issues very differently from his predecessor. Because states were dragging their feet updating their civil codes to allow for equal marriage — often claiming that the marriage forms could not so easily be rewritten to eliminate "his" or "her" — he believed the country was ready for a federal bill that would

legalize it all over Mexico. I had a privileged and up-close view of this process and of this presidential decision. In December 2012, in one of those unexpected turns in life, I was invited to work for this newly elected president of Mexico. I thus became a political and media advisor to his chief of staff.

My job consisted mostly of analyzing current public policy and making suggestions on how it could be improved. The chief of staff read my work and discussed it with me before walking into the president's office, only a few feet away, to see what he had to say about the new proposals. If we were lucky, the head of state would instruct some cabinet member or other top official to have them implemented, or perhaps expanded on and improved, and then executed. I will not bore you with the details of everything I did there, but there is one proposal I am particularly proud of. It consisted of inviting LGBTI+ leaders and activists to the presidential residence to show the government's support for their work and to discuss with them how public policy regarding equality could be improved. It took a whole year for this idea to be brought about, a proposition that had not only been well received by the president but to which he had also added a lot of his own. In the end, President Peña would not only welcome dozens of LGBTI+ leaders from all over the country to his official residence but also send a new bill to Congress, asking the federal legislature to make equal marriage a valid right in all 32 states. Our excitement on this unexpected result would not last as the Mexican Congress soon refused to pass the new law that the president had sent. As the graphic quote I give you above from Cardinal Rivera clearly shows, powerful religious forces were behind the opposition to such a novel, national piece of legislation. This time, unlike in Mexico City in 2009, they were strong enough to prevent federal deputies from even putting the bill up for discussion on the floor, much less getting it to a plenary vote.

Many months later, in fact only a few weeks before the Peña administration would come to a close, in December 2018, my former boss, still the president's chief of staff at the time, came to my new hometown of Puerto Vallarta, so I suggested we meet for a drink and conversation at the port city's beautiful boardwalk. "That was such a great move, to send a formal bill to Congress," I told him. "Wish it had been taken up by the Congress." His response left me quite surprised, not pleasantly. "All those LGBTI+ activists let us down," he said looking me in the eye. "They should have marched on the streets in every state capital, called lawmakers, published articles, spoken before crowds, made a fuss to have that bill passed." After an uncomfortable silence, he added, "All they wanted was a photo op with the president, not a federal equal marriage law."

Sure, we will forever claim that the "dark forces" of Catholic and Evangelical conservatism did away with that shining hope of a legislative bill. But part of the truth is that we need to come out and speak up, let our representatives know that

this is what an important part of Mexican society desires and would be happy to see in the books. In the opinion of this former top official, there is only so much a presidential bill sent to the Legislative Branch can do, "in this new democratic Mexico," if LGBTI+ crowds fail to act and flood the halls of Congress with demands, arguments and undeniable public support. If they refuse to show up in the public arena, show their faces and make their voices heard, fearful and often ignorant legislators will not open their ears and their hearts. These same activists had, however, showed their ability to do exactly that eight years before at the Mexico City Legislative Assembly.

I tell you the story in this close-up fashion because I believe it is important to seize opportunities and do the hard work that it takes for government, or church, to act. Once we start shaking things up, as I myself did in the high echelons of the Mexican government, we must be ready to decidedly stand behind whatever positive, encouraging decisions are made.

LGBTI+ Catholic Leadership

> *"Gay people have the right to live as they want, to choose what they want, and the government can give them a statute, some legal form for their association. But they have no right to aspire to marriage, because marriage is something else; it is the union between a man and a woman."*
>
> —Juan Sandoval Iñiguez, Cardinal and former Archbishop of Guadalajara, Mexico[5]

All of these events did not sit well with the ultra-conservative "leaders" of the Roman Catholic Church in Mexico. The "loving arguments" they used to oppose the 2016 presidential bill to legalize equal marriage nationally were very old-fashioned, to say the least. Their descriptions also attempted to describe me, my husband and many a close friend as well as the hundreds of committed LGBTI+ Catholics I have had the honour of meeting from Tijuana to Cozumel, from the Pacific coast to the Gulf of Mexico.

Whenever an LGBTI+ activist asks me why in the world I remain in the Catholic Church, I can't help but describe the many amazing feats of love that this religious organization is capable of pulling off. I affirm this so unequivocally because I have seen this myself quite often. The lonely parish priest pressuring a local government to make sure the vaccination corps arrive to his impoverished municipality. The sense of solidarity and unity that a community gets from the leadership of a young seminarian who is there not only to give out the sacraments but also to speak to the people, to listen to their concerns, to work together — in companionship — to make their material lives a little better. And, of course, the Roman Catholic friar who offers a vision of Christian hope and meaning to a

flock that is often confused and offended by the awful events of our world. Their voices and their testimonies are what keeps me believing in the Catholic Church; it is also what many LGBTI+ Catholics treasure and that feeds their desire to continue working in unison, as true Catholics.

You will hardly ever hear about any of this on the news or in social media. There, it is all about pedophilia and the wealth and mismanagement of the Catholic hierarchy. However, I have seen the powerful potential for good that my church holds, and I have seen her in action, improving lives and expanding spiritual horizons that effectively build the Kingdom of Heaven down here on earth. Believe it or not, there are indeed parts of the Catholic Church that have not forgotten the message of Jesus.

This is exactly the company we want to keep as LGBTI+ Catholics, a true spiritual community to aspire to. It is something that I have also seen with my own eyes all across my country and, in fact, in many parts of Latin America. I speak to you as co-chair of the Mexico Network of Rainbow Catholics. Ours is an organization designed to summon all of Mexico's LGBTI+ Catholic groups in order to achieve full religious and social integration through a renewed Catholic Church.[6] Just like Saint Francis in his day — and please notice that the name taken by our current Pope appears to be no coincidence — we do not want a new Church; we want a significant improvement over the one we already have. Francis went before Pope Innocent III and told him that the Church's ways had to change, that God did not like the way things were going and that the hierarchy had stepped away from Jesus's teachings. We like our Church, we cherish its sacraments, but we do believe some of its teachings, its moral guidance, must be updated and amended. As was the case when I worked for big government, I know that when Catholic leaders set out to do good, they can do so outstandingly well. And, as it happens, by virtue of our common baptism, we are indeed LGBTI+ Catholic leaders. We are rainbow Catholics, and we intend to lovingly and purposefully tell our brothers and sisters in our small praying communities, in our local parishes, in the big dioceses and even bigger archdioceses and, well, in the Vatican itself, that we wish for a different Church. We are, however, already building a new Catholic community from the grassroots: it is a voice that is now being heard and that has produced bountiful fruit, as Galatians would have it, of "love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, and self-control."[7]

A Growing, Well-Financed Challenge from Evangelicals

I will discuss the apparently undeterred expansion of Evangelicals in Mexico by sharing with you two stories. One has to do with a fellow LGBTI+ activist; the other with a friend who left the Catholic Church to join an Evangelical organization.

Let's start with the latter. Jesús liked his divine namesake very much, but the way he was being treated by his Catholic community did not sit well with him. As with many young Catholics, he saw the happy singing, the get-togethers, the social work that this Evangelical church did in his city and came to like it. They all seemed so relaxed and informal. Back in his old church, it was all silence, incense and a little too much respect. Even though the Evangelical churches have not expanded as much in Mexico as they have done in Central and South America, they do have a strong following, particularly in the poorer, southern part of the country. There is no doubt that they are well-funded, mostly from organizations in the United States. However, hearing Jesús tell me about his experience, I concluded that Evangelicals are even more prone to discriminate against LGBTI+ individuals than the Catholic Church itself. Lesson learned. Jesús decided to leave the Evangelical church, but he never quite made it back to his old Catholic circle. This is the often repeated and sad story of an LGBTI+ person wishing to join a Christian community but finding that they can only do so if they hide and remain mostly quiet. In these Evangelical groups, many Mexicans find not only a different way of worship but also often material and financial support. The Catholic Church in Mexico appears to be losing members not to atheism or agnosticism but to Protestant denominations, only more slowly than many thought. This is not the case, however, in countries like Uruguay, where a large percentage of the population wants nothing to do with Christianity or its institutions.[8]

The second story regarding Evangelicals comes from a good friend of mine, an LGBTI+ activist who holds no religious convictions. When we LGBTI+ Catholics speak to fellow activists about our dream of equal Church membership, about our desire to walk into a Catholic Church by the hand of our partners and spouses "just like everyone else" and about the hard work we are already doing to get there, we often get asked the same disbelieving questions and hear similar complaints: "Why are you even still there?" "Why are you in an institution that denies your very identity?" "You are wasting your time and everyone's efforts in dealing with the Roman Catholic Church! Stop already!" Fair enough. However, though we understand the reclamations, I must say that when we calmly and uncomplainingly explain what is behind our efforts, how relevant our Catholic spirituality is for us and how unfair it is for LGBTI+ people to give it up because of who they are, most of these activists "get it" and understand that we all have our issues, our priorities, our lives. This was the case with a good friend of mine, a "high-ranking LGBTI+ activist" in Mexico City, who happened to be close to the president in that now-famous photograph of LGBTI+ leaders at the official residence. Enrique had the patience to hear me out and "got it." This is not about converting activists to Catholicism; it is about working together for common, transcendent goals that add value to Mexican society. It is our hope that the many

other LGBTI+ Catholic movements we know of around the world will also seek to speak to other activists, join hands and bring about justice to all regardless of whether they go to Mass every Sunday or not.

So it was that I was talking to Enrique a couple of years ago about a bus campaign that an organization had set out "to protect the Mexican family" and oppose gay marriage and, particularly, the adoption of children by LGBTI+ couples (do remember the above story about a presidential bill; no coincidence here either). The "orange bus" would travel the country to proclaim to everyone that the Mexican family would not be destroyed by "a minority of homosexuals."

"I hear there are Catholic organizations backing this bus tour," I told him. "Well, yes," he said. "But we activists are not so much concerned with Catholic opposition to gay marriage as much as Evangelicals. They have the means, the will and the time to do all this. They are a true force we must deal with, much more so than any of our Mexican Catholic organizations," he concluded. This is how I obtained first-hand evidence of the will of Evangelicals to deny LGBTI+ Mexicans the right to equal marriage and the adoption of children. They had been defeated in Mexico City back in 2009, and they would not see that happen again at the national level. And they didn't. As I have made it very clear, the Congress would not even put President Peña's bill on the floor. For the record, Catholic institutions did join the bus campaign strongly and loudly, but the biggest effort really came from the logistical abilities and the strong funding that came from Evangelicals. Ireland would envy the way Catholics and Protestants joined efforts in their drive to fight LGBTI+ rights in Mexico.

An Evolving Roman Catholic Church

I hope I have been able to present a panorama of the situation of LGBTI+ rights in Mexico and of how the Catholic Church still plays a role in denying them. But not all is lost. Parts of the Church in my country are opening up, holding on to every word of tolerance Pope Francis pronounces, and not only welcoming us to their communities but engaging in active, positive dialogue.

As for the rest of Latin America, the situation is quite similar in a largely Catholic subcontinent. With a few exceptions, such as Argentina and Uruguay, we are mostly struggling with the same issues and the same old-fashioned thinking of Catholic doctrine from Mexicali to Bariloche. I often talk to LGBTI+ Catholic leaders in many of those countries. Hope is in the air. Our Church is starting to realize that we are an asset, not an enemy. That we are here not to destroy our religious institution but to rebuild it and expand it in a renewed fashion. It is our constant prayer to God that she will be there to help us start this challenging, hopeful transformation. We may not be around to see it completed, but we certainly are ready to lay down strong, durable foundations.

Carlos Navarro Fernández is the co-chair of the Mexico Network of Rainbow Catholics.

1 Senate of the Republic of Mexico, *Los derechos de las personas LGBTI en el mundo y la situación en México* (LGBTI rights around the world and the situation in Mexico) (Mexico City: Centro de Estudios Internacionales Gilberto Bosques, June 7, 2016). Available via https://centrogilbertobosques.senado.gob.mx/analisisinvestigacion/contexto/di-070616-lgbti.

2 D. Miklos, "Blattángelus: Un documental iluminado" (Blattángelus: An Illuminated Documentary), *Nexos* magazine, October 1, 2010.

3 J. Brandoli, "La Iglesia mexicana en lucha contra los matrimonios y adopciones gay" (The Mexican Church Fights Gay Marriage, Adoptions), *El Mundo,* September 13, 2016.

4 National Council to Prevent Discrimination (CONAPRED), "Matrimonio igualitario, a 10 años de su aprobación en la Ciudad de México" (Equal Marriage, 10 Years After Its Approval in Mexico City), news bulletin 2019-140, December 21, 2019.

5 A. Rivera, "Matrimonios gay, minorías en contra de mayoría: Sandoval Íñiguez" (Gay marriages, minorities against the majority: Sandoval Iñiguez), *El Universal,* May 30, 2016.

6 Mexico Network of Rainbow Catholics, "Our Goal." Available at https://en.catolicosarcoiris.mx/objetivo.

7 Galatians 5:22–23 (Revised Standard Version).

8 J. Corrales, *LGBT Rights and Representation in Latin America and the Caribbean: The Influence of Structure, Movements, Institutions, and Culture* (Chapel Hill, NC: The University of North Carolina at Chapel Hill, 2015). Available at https://globalstudies.unc.edu/wp-content/uploads/sites/224/2015/04/LGBT_Report_LatAm_v8-copy.pdf.

Church and Decriminalization in Latin America

Jim Hodgson

For almost 40 years, my work has taken me back and forth between Canada, Latin America and the Caribbean. I lived in the Dominican Republic in the late 1980s and in Mexico in the late 1990s.

But I am not Latin American, just a close friend and chosen-family member.

As such — and conscious of the manifold ways that Christians from the Global North caused many of the problems that we contend with in this conference — I will focus on the ways that people of faith can either help or hinder the struggle for LGBTI rights and inclusion.

I will begin by sharing something of how The United Church of Canada took its relatively progressive history in Canada on LGBTI rights and inclusion into conversations with global partners. Canada decriminalized sexual activity between adults of the same sex in 1969, but discrimination persisted. The United Church began to defend the human rights of sexual minorities in the 1970s. It resolved in 1988 to end barriers to membership and ministry of gay men and lesbians. It decided in favour of equal marriage in 2003. A series of decisions a decade ago welcomed trans people into full participation.[1]

In the past 15 years, we deepened conversations among churches and social movements for LGBTI rights and inclusion. A series of consultations helped to ensure that we were working in ways that placed partners and their contexts at the heart of the conversation, always inviting and trying not to impose. In 2019, a Latin America regional consultation was held at the Reformed University Corporation in Barranquilla, Colombia. What I share today draws from that event.

Most of us in the Americas live with legal frameworks imposed during the colonial era.[2] In Latin America, same-sex activity and diverse gender identities weren't so much criminalized as persecuted.[3] A key issue for LGBTI people in recent decades has been to end persecution by opening public space and increasing legal protection. Progress has been made, but extreme levels of violence persist.

Our consultation in Barranquilla was grounded in Colombia's struggle for peace with social justice. In the past two decades, the late stages of a 60-year civil war, I came to know people in the municipality of San Onofre, which is close to the Caribbean Sea, a three-hour drive from Cartagena. The worst of the violence perpetrated by paramilitary death squads had eased by the time of my first visit to the area in 2006. I travelled with leaders of Colombia's Methodist Church who had accompanied local communities of Afro-Colombian and Indigenous peoples through the bad years.

In 2015, Colombia's National Centre for Historical Memory published

its report[4] on violence against LGBTI people during the civil war. The section on what happened in San Onofre, where young gay men and trans women were forced into boxing matches and publicly humiliated for the pleasure of the paramilitaries, gives urgency to my words to you today.

Across Latin America, with regard to LGBTI rights and inclusion, you find a panorama of contradictions. While the region has high levels of violence directed at LGBTI people, it now has some of the world's more progressive laws for protection and equality. Most countries ban overt discrimination, and transgender persons can change their legal gender and name without surgery or judicial order. Some countries ban "conversion therapy." Same-sex marriage is more frequently celebrated, in part due to the decision in January 2018 of the Inter-American Court of Human Rights,[5] but especially because of advocacy carried forward by activists and their excellent lawyers over many years.

But these gains coexist with violence and restrictions on access to rights. Because of bullying, the LGBTI population tends to abandon the education system early. LGBTI people suffer discrimination in access to housing and health services and have fewer job opportunities.

Every day, four LGBTI people are murdered in Latin America and the Caribbean.[6] In 2018, Brazil saw at least 420 fatal victims of anti-LGBTI violence.[7] On October 25, 2020, Joana Domingos — just 19 years old — became the 141st trans person murdered in Brazil this year.[8] The report of our consultation in Barranquilla stated: "In most cases this violence is silenced or treated as commonplace and banal, thus aggravating the effects of violence."

We also saw that hate speech is legitimized by Christian fundamentalist groups that denounce what they call "gender ideology." I mentioned Colombia earlier, where the stories of victims of the war, including women and LGBTI people, have been told. But the very act of gathering such stories, and then the strong influence that voices of victims had in the peace process, enraged conservative politicians and their religious allies. To them, telling the stories and demanding change represented the "imposition of gender ideology."

In Colombia and elsewhere — including Canada — these groups try to instill a sense of panic by singling out the movements that respect sexual diversity and support gender justice. They describe LGBTI movements as threats to public health, the traditional family, established religion, democracy and social order. They would also deny or de-fund sexual and reproductive health services, as well as attention to HIV-positive people and the LGBTI migrant and refugee population. With well-funded allies from the Global North, they bring their advocacy to civil society spaces, including those of the Organization of American States, where they outnumber progressive religious voices.

Christian fundamentalists justify themselves by waving the banner of "re-

ligious freedom.'"[9] But freedom of religion is like freedom of speech. Neither can be upheld in ways that undermine the rights of women or people who are discriminated against because of poverty, race, disability, sexual orientation or gender identity or expression. Defence of sexual rights and gender justice is not anti-Christian. It does not, as the fundamentalists allege, attempt to put men above women as a sort of revenge, or to "homosexualize" the entire population.[10]

Women and LGBTI people have been mistreated throughout history: the time for change has come.

Some churches defend the dignity of women and LGBTI people. I mentioned the Colombian Methodist Church earlier, which supports inclusion. Other churches across the region do so as well, together with a tiny handful of Catholic bishops. They create spaces for mutual listening, weaving networks and planting seeds of peace and justice as they raise their voices for a world of greater solidarity. Some seminaries adjust their theological education so that the ministry of inclusion practised by Jesus becomes a model for contemporary ministry. The Multidisciplinary Studies Group on Religion and Public Advocacy (GEMRIP) carries academic and theological reflection on gender justice into public debate.

Many Latin American and Caribbean churches and ecumenical groups participate in the global ACT Alliance of relief and development agencies. In 2017, ACT approved a gender policy that states: "ACT Alliance is committed to respect, empower and protect the dignity, the uniqueness and the intrinsic worth and human rights of every human being. ACT Alliance does not accept any discrimination on the basis of gender identity and sexual orientation, disability, nationality, race, religion or belief, class or political opinion so that all people shall have the same power to shape societies, faith communities and their own lives."[11]

Those of us who met in Barranquilla invited churches and ecumenical groups to work in ways that recognize the dignity and spirituality of LGBTI people and our need for pastoral accompaniment as part of the whole people of God.

In place of fear and prejudice, let us build alliances of solidarity across all borders. Thank you.

Jim Hodgson is a journalist with extensive experience in Latin America and the Caribbean. Over the past four decades, he has written for a variety of church-based media and worked in the Dominican Republic for two years in the late 1980s and in Mexico for six years in the 1990s. From 2000 to 2020, he worked with The United Church of Canada as its Latin America/Caribbean program coordinator, leading efforts there to expand work with global partners for LGBTI rights and inclusion. He lives in Toronto with his partner, David García, president of Latino Group HOLA.

[1] The United Church of Canada also acknowledged the difference between gender identity and sexual orientation, affirmed that gender identity is not a barrier to membership and ministry, and requested that all existing policy statements that refer only to "sexual orientation" be updated by adding "and gender identities." For more information on this history, please see *Moving Toward Full Inclusion: Sexual Orientation and Gender Identity in The United Church of Canada,* 2nd ed. (Toronto: The United Church of Canada, 2014) available at www.united-church.ca/sites/default/files/full-inclusion.pdf and *Celebrating Gender Diversity: A Toolkit Gender Identity and Trans Experiences for Communities of Faith* (Toronto: The United Church of Canada, June 2019) available at www.united-church.ca/sites/default/files/trans-kit_2019.pdf.

[2] L. Mott, "Las Raíces de la Homofobia en América Latina," no date. Available at www.censida.salud.gob.mx/descargas/drhumanos/luizmott.pdf.

[3] L. Ramón Mendos, *State-Sponsored Homophobia 2019* (Geneva: International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), March 2019), pp. 529–530. Available at https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf.

[4] Centro Nacional de Memoria Histórica, *Aniquilar la Diferencia: Lesbianas, gays, bisexuales y transgeneristas en el marco del conflicto armado colombiano* (Annihilate the Difference: Lesbians, Gays, Bisexuals and Transgender People in the Context of the Colombian Armed Conflict) (Bogotá: CNMH, UARIV, USAID and OIM, December 2015), pp. 189–192, 278. Available at www.centrodememoriahistorica.gov.co/descargas/informes2015/aniquilar-la-diferencia/aniquilar-la-diferencia.pdf.

[5] This decision has made the legalization of such unions mandatory in the following countries: Barbados, Bolivia, Chile, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Suriname. Argentina, Brazil, Colombia, and Uruguay are also under the court's jurisdiction but already had same-sex marriage before the ruling was handed down.

[6] A. Moloney, "LGBT+ murders at 'alarming' levels in Latin America — study," *Thomson Reuters Foundation,* August 8, 2019. Available at https://ca.reuters.com/article/idUSKCN1UY2GM. See also the website of the Regional Information Network on Violence against LGBTI People in Latin America and the Caribbean at https://sinviolencia.lgbt/quienes-somos.

[7] M. Hermanson, "En 2018 hubo 420 víctimas fatales de la violencia contra LGBT en Brasil" (In 2018, there were 420 fatalities of anti-LGBT violence in Brazil), *Brasil de Fato,* February 11, 2019. Available at www.brasildefato.com.br/2019/02/11/en-2018-hubo-420-victimas-fatales-de-la-violencia-contra-lgbt-en-brasil.

[8] J. Milton, "Joana Domingos dies after being shot seven times. She is the 141st known trans person murdered in Brazil this year alone," *PinkNews,* October 30, 2020. Available at www.pinknews.co.uk/2020/10/30/joana-domingos-death-tribute-trans-woman-murder-violence-alagoas-brazil.

[9] See, for example, L. Payton, "Christian leaders say faith under attack in Canada by governments, regulators," *CBC News,* March 25, 2015. Available at www.cbc.ca/news/politics/christian-leaders-say-faith-under-attack-in-canada-by-governments-regulators-1.3008916.

[10] J. Esteban Londoño, "Cristianismo e Ideología de Género" (Christianity and Gender Ideology), *GEMRIP.* Available at www.gemrip.org/cristianismo-e-ideologia-de-genero.

[11] ACT Alliance, *Gender Justice Policy,* June 2017, p. 2. Available via https://actalliance.org/documents/act-gender-justice-policy.

SECTION TWO

THE CHURCH AND DECRIMINALIZATION IN AFRICA AND ASIA

Left Behind by Laws, Policies and Practices: Lived Realities of Sexual Minorities in West Africa

Ngozi Nwosu-Juba

"When they got out of the building, they poured petrol on me. I started urinating. They said I was a curse and the reason the town did not have water and people are dying … When I was rescued from being burnt, my family said they will make a decision on what they will do with me as I am likely to destroy my family reputation." — Ghanaian lesbian

"I was the favourite member of the choir. Most congregation members say to me that my voice take away their sorrows and I am the reason they hurry to church on Sunday mornings … All that changed the day my closest friend gave me away. He told the pastor I was gay. The pastor asked me to leave the church as it was an abomination for someone like me to be in the church choir. I contemplated suicide … I thought the church was a place of acceptance and love…" — Nigerian gay man

"The African church must open its mind to honest conversations. The African bishops need to stop doing the talking and start listening to LGBT people. We are not making much progress with the debate in Africa … As for the bible and scripture, I just try to do my best to live the way I believe a good person should and leave 'the book' to others who do a great job twisting it into what they want to believe." — Davis Mac-Iyalla, Nigerian LGBTQI rights activist and founder of Interfaith Diversity Network of West Africa

The quotes above reflect some of the lived realities of many LGBTQI people in West Africa.

According to *We Exist,*[1] a report published in 2015, lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) people across West Africa live in an increasingly hostile environment. The report stated that a surge in homophobic laws, violence and arrests have focused attention on the struggles of LGBTQI people in the region. The laws, policies and practices as they currently exist in most of West Africa do not in any way support or reflect the various commitments made to promote and protect human rights at regional and international levels, neither do they reflect the preaching and teachings that happen in Africa's most religious countries. Almost all countries in West Africa have committed to the UN's Sustainable Development Goals (SDGs), which pledge to "leave no one behind."

Many West African countries have laws either inherited from colonial masters or passed by its leadership criminalizing homosexuality, affecting LGBTQI

people. In 2014, former president of the Federal Republic of Nigeria Goodluck Jonathan signed into law the *Same-Sex Marriage (Prohibition) Act.* At about the same time, a similar law was passed in October 2014 by then president of Gambia Yaya Jammeh. In Burkina Faso, although the laws are silent on same-sex practices, there are campaigns for similar laws; likewise in Liberia. Also, there have been a wave of violence and arbitrary arrests in Ivory Coast, Mali and Senegal that target LGBTQI people.[2]

In Ghana, *Criminal Code, 1960 (Act 29)* criminalizes "sexual intercourse with a person in an unnatural manner,"[3] which is widely interpreted as the criminalization of homosexuality, mostly for men. The case for lesbians is less clear. Irrespective of this lack of clarity, lesbian, bisexual, queer and transgender (LBQT) people are not spared in the abuse faced by gay men in the country. Under Liberian law, "voluntary sodomy" is a first-degree misdemeanour and has been for a very long time. The act is inscribed in Article 14.74 of Liberia's *Penal Law, 1976* and is punishable by up to a year in prison.

In Nigeria, in addition to the *Same-Sex Marriage (Prohibition) Act* mentioned earlier, the Criminal Code provides punishment of 14 years in prison for "carnal knowledge of any person against the order of nature." In 2000 and 2001, the northern states in Nigeria adopted Islamic Sharia law, under which homosexuality can be punished by death. The *Same-Sex Marriage (Prohibition) Act* exacerbates the situation of Nigerian LGBTQI people. The law criminalizes same-sex relationships, prohibits the "public show" of same-sex relationships and imposes a 10-year sentence on anyone who "registers, operates or participates in gay clubs, societies and organisations," including supporters of those groups.

In Sierra Leone, section 61 of the *Offences against the Person Act, 1861* criminalizes buggery with punishment ranging from 10 years to life in prison. The impact of these laws even in countries where they are not actively enforced is that they stir homophobia against LGBTQI people. Cases of mob attacks against same-sex-loving people exist and cut across all regions, with these laws giving perpetrators the license to engage in these violent acts.

The challenge with laws, policies and practices in many West African countries is their interaction with religion and with the peoples' culture. My work in four countries in West Africa (Nigeria, Ghana, Sierra Leone and Liberia) provides the evidence for this assertion. The former president of Nigeria, in justifying the passage of the *Same-Sex Marriage (Prohibition) Act* in 2014, said the majority of Nigerians agitated for the passage of this law. Nigeria is a secular state, where, according to the CIA's 2019 *The World Factbook,* 49% of its citizens practise Christianity, 49% practise Islam, and 0.9% practise local religions. Attending the public hearing in 2009, which heralded the passing of the *Same-Sex Marriage (Prohibition) Act,* were church and mosque representatives who spoke "eloquently" on

how sexual orientations other than heterosexuality and gender identities other than the binary of cis male and cis female are un-African and imported behaviour that might bring the "wrath of God" upon the country and its citizens.

A particular religious leader at the 2009 public hearing of the *Same-Sex Marriage (Prohibition) Act* quoted Genesis 13 from the Bible, describing how the event of Sodom and Gomorrah might be unleashed in Nigeria if same-sex relationships were not criminalized in the country. It was surprising to find Muslims and Christians uniting to demand the passage of the discriminatory law on grounds that homosexuality is an abomination in the country! Never before have the two faiths agreed on the same points, except when they involved LGBTQI people and women's sexual and reproductive health and rights. In 2004, Christian and Muslim groups made presentations that stalled the domestication of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Nigeria, calling it an "abortion law." The passage of the *Same-Sex Marriage (Prohibition) Act* has led to gross human rights violations of and attacks on LGBTQI people in the country. Public morality, religious interpretations, traditions and cultural beliefs have been used as excuses for passing and upholding the anti-gay laws. On various occasions and in different circumstances, natural disasters have been blamed on homosexuality, the connection often regarded as God's anger on the people, which religious leaders and followers do not joke about. During an interview within the context of a research study commissioned in 2019 by COC Netherlands, Benice (not her real name) had this to say:

> *"Not only was I afraid for my safety, I was also afraid for my parents and siblings who could come under attack for protecting me. Our religion forbids women loving women and I have been involved many times in prayer rituals so that the demon of homosexuality can leave my body."*[4]

Apart from homophobic attacks, some LGBTQI people suffer from internalized homophobia as a result of the abuse and injustice they face even within faith-based organizations. The criminalization and penalization of consensual same-sex relations between adults, and the widespread violations related to this, demonstrate the deep-rooted aspects of homophobia, transphobia, patriarchy and legislative impunity that exist in most West African countries.

In Sierra Leone, citizens are afraid to disclose their sexuality, as they do not attract sympathy even within religious circles. Agnes (not her real name) had this to say:

> *"It is considered an abomination to love a same-sex person. Homosexuality is the only behaviour that has failed to attract sympathy, and there seems to be general agreement that gay people are not welcome in society. There are cases where it is equated*

with stealing and pedophilia, thereby making it unacceptable within religious and cultural spaces. I had to marry to take away attention from me. I also participate in most church activities. All this will change if they find out that I am lesbian."[5]

In Liberia, Josephine (not her real name), a lesbian, believes that lesbians should "tone it down." She asserts that there are Bible verses that do not support same-sex love. "Toning it down" has come to mean that sexual minorities have to live a life of denial and submit to the wishes of the people, which in some instances means marrying a person of the opposite sex or allowing parents to find suitors as a means of protecting their identity.

Given the dominance of Christianity in many countries where homophobia is on the rise, churches in particular are seen as fuelling the repression of African LGBTQI people. It is easy to find evidence to support this. Davis Mac-Iyallah, a Nigerian citizen who sought asylum abroad, decided to go public as a result of the increasingly dysfunctional attitude of the Nigerian Anglican church. He mentioned that he had to come out, to be open about his sexual orientation, because he was exasperated by the increasingly homophobic attitude of the Nigerian Anglican church and its leaders. According to him, first they claim that LGBTQI people do not exist in Africa and then they turn around and condemn them. In the case of Nigeria, when the law was signed in January 2014, the leaders of the local Anglican and Catholic churches were very much in support and so was the entire Christian association and its Muslim counterparts. Mathew, a gay man who sings in the choir, was shattered when the church turned its back on him upon realizing he was gay. He said, "The church did not practise love when they sent me away." In Ghana, aside from the laws and policies, the culture of non-acceptance originates from all people irrespective of religious beliefs. The simple truth is that most African governments and religious leaders have created an environment of fear and terror for LGBTQI people.

A 2014 research study in West Africa[6] notes that one of the major issues against homosexuality is the belief that it is borrowed behaviour and an un-African import from Western countries. Many organizations have been working to challenge this assertion. In 2017, the Interfaith Diversity Network of West Africa convened religious leaders from 10 West African countries. The aim was to create a network of religious leaders who might work towards ending injustices against LGBTQI people. The findings are daunting: while some of the religious leaders thought that LGBTQI people required some form of deliverance to be acceptable, others thought that accepting LGBTQI people required many years of explaining to other members of society who find their behaviours offensive. Some religious leaders at the conference confessed that they had never met a gay person and were surprised that LGBTQI people think and act like humans! A few

agreed that there is a need to accept all humans, seeking time to adjust to the new information. Some thought that accepting gay people would amount to going contrary to God's words and quoted many Bible passages to support the lack of acceptance. The most popular of those quotations were from the Old Testament.

Though this article has focused attention on West Africa, the lack of acceptance extends to other African countries. In a 2020 report,[7] the African Christian Democratic Party has described LGBTQI people as sinners who practise acts that undermine African values and religion. They further said it is the desire of the liberal West to impose the "LGBTQI agenda" on the African continent, urging those who wish to see the moral and social fibre of African communities strengthened to reject the call in its entirety. The connection between laws and people's practices of upholding their culture is seen in their misconception of interpreting same-sex love as practice rather than a sexual orientation.

Responding to the African Christian Democratic Party on Facebook, Davis Mac-Iyallah described the party as an offensive group of associates who have no idea of what they are talking about. He urged African traditional leaders to tell the truth about human sexuality or admit their outright ignorance to create room for educational dialogue. In a telephone interview, Mac-Iyallah explained that some of the misconceptions led to his establishing the Interfaith Diversity Network of West Africa, which promised to bring as many religious leaders as possible to the circle of learning and knowledge creation.

Though gay men suffer abuse, lesbians and gender non-conforming people face more injustice. Due to the HIV pandemic, many organizations that cater to men who have sex with men (MSM) receive support, creating some form of visibility.[8] This is not the case for lesbians who face twice the violence other women face. Lesbians are often referred to as deviant and stubborn women. In most West African countries, as in other parts of the continent, patriarchy is deeply rooted. Within this system, gender is conceived in strictly binary terms, and female sexuality is valued only as a means of procreation. Women are regarded as family property and become their husband's property after marriage. A woman's status depends on her marital status and her ability to bear children. An unmarried woman is severely stigmatized; she is considered to have failed her generation. Christian teachings also emphasize marriage and its honour. Lesbians are sometimes regarded as women who have failed to find male partners. Generally, LGBTQI people are seen as people who are challenging God by refusing to marry and fulfill the Bible mandate on procreation and replenishing the earth.

In 2012, at the Nigerian Feminist Forum, a 23-year-old lesbian told other workshop delegates the story of how her father, who is a religious leader, with the support of other members of the family, held her legs wide open so that her uncle could have sexual intercourse with her to "cure" her of lesbian love. Church

teachings, especially in West Africa, condemn lesbian relationships outright. According to a lawyer and popular pastor in a church in Lagos, Nigeria, "Homosexuality is the only sin against God that cannot be forgiven." In his own words, it is an affront to God, and every true believer must challenge and condemn it. Religious teachings such as described above are common within the Christian faith, making LGBTQI people stay away from places of worship.

"The pervasive nature of violence based on perceived or actual sexual orientation and gender identity prompted the African Commission on Human and Peoples' Rights to adopt Resolution 2759 at its 55th Ordinary Session in Luanda, Angola, calling on state parties to the African Charter on Human and Peoples' Rights to put in place mechanisms that protect citizens from violence experienced as a result of sexual orientation and gender identity."[9] This resolution of the African Commission was a milestone in the Commission's commitment toward the fulfillment of its mandate.

What Roles Are Expected from Religious Leaders?

Although several studies, including the *We Exist* report, identified a need to initiate dialogue with religious and traditional leaders, very few organizations are doing this. Almost no work is being done to support LGBTQI people to reconcile their faith with their sexual orientations and gender identities. House of Rainbow and the Levites Initiative for Freedom and Enlightenment in Nigeria are the only LGBTQI faith-based organization in West Africa.[10] House of Rainbow works primarily in anglophone countries but has plans to expand further in Africa, with an additional focus on francophone regions. Unfortunately, while based in Nigeria, the House of Rainbow was threatened through a media frenzy in 2011, forcing the pastor to flee to the United Kingdom, where the organization is still run today. Levites Initiative is based in Delta State, Nigeria, and helps LGBTQI people reconcile their sexuality with their faith. The Interfaith Diversity Network of West Africa was established in 2017. So far, it has trained more than 70 religious leaders and strengthened the capacity of more than 200 LGBTQI people to assert their right to practise their religion. According to Davis Mac-Iyallah, "there is the need to build the capacity of religious leaders in West Africa to focus on the tenets of the Bible on love and acceptance."

There is an urgent need to invest funding and extend technical support to organizations working on faith and sexuality. Their work is critical towards bringing religious leaders to the circle of learning and knowledge about sexual diversities.

Most West African states are secular, without an official religion. Religious-based laws such as the *Sharia Penal Code* in northern Nigeria and the *Criminal Code, 1960 (Act 29)* in Ghana and other countries need to be brought in conformity with international human rights laws, which promote all rights,

including those based on sexual orientation and gender identity; protect LGBTQI people from discrimination; and prohibit capital punishment for consensual sexual relationships.

The various countries' Constitutions, especially the chapters on fundamental human rights, should conform with countries' endorsements and ratification of the International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child and other international human rights treaties, which protect from discrimination based on any grounds, including sexual orientation and gender identity.

The emergence of anti-homosexuality politics in Africa is often justified by referring to religion. Given the dominance of Christianity in many countries where homophobia seems on the rise, churches, in particular, whose words and actions fuel repression and homophobia, should bring their teaching to conform to the tenets of love as espoused by the Holy Bible.

Lawmakers in many African countries should not rely on religious sentiments when enacting laws and end the use of religious arguments to enact laws.

Churches and religious bodies should contribute to research and documentation to understand that non-heteronormativity is not new and has been part of human life. By doing so, they will reduce stigma and discrimination and eradicate the notion that homosexuality is un-African.

LGBTQI rights are human rights and must be respected, with religious groups playing a leadership role.

Ngozi Nwosu-Juba is an experienced researcher in the areas of non-governmental leadership, gender, organizational development and human rights. She has been involved in research and advocacy both at national, regional and international levels. She contributed to researching the lives of LGBTQI persons, serving as the Nigerian consultant. The outcome report titled 'We Exist' shows violations faced by the community in West Africa. She is the Chair of the Interfaith Diversity Network of West Africa- the network currently works in ten countries and serves on the board of Coalition for the Defence of Sexual rights in Nigeria and Coalition of African lesbians in South Africa.

[1] M. Armisen, *We Exist: Mapping LGBTQ Organizing in West Africa* (West Africa LGBTQ Activist Fund Brain Trust and Queer African Youth Network, 2015), p. 4. Available at https://s3.amazonaws.com/astraea.production/app/asset/uploads/2016/10/WeExist.pdf.

2 COC Netherlands, unpublished research report, 2019, p. 11.
3 *Criminal Code,* 1969 (Act 29), s. 104(2).
4 COC Netherlands.
5 Ibid.
6 P.P. Rodenbough, "On Being LGBT in West Africa," Virtual Student Foreign Service project and independent report, July 2014, p. 8. Available at https://blogs.cuit.columbia.edu/rightsviews/files/2015/03/Being-LGBT-in-West-Africa-Project.pdf.
7 Available via www.mambaonline.com.
8 Armisen, *We Exist,* p. 5.
9 Queer Alliance Nigeria, "A Shadow Report on Human Rights Violations Based on Sexual Orientation and Gender Identity in Nigeria," submitted for consideration for the 31st Session of the Universal Periodic Review, March 29, 2018, p. 5.
10 Armisen, *We Exist,* p. 18.

Radical Inclusion: Dare to Dream

R. Christopher Rajkumar

Let me begin this essay with two real-life incidents that have challenged me to write this.

#1 My Son Is Not Eligible to Live

Mariyappan (name changed), my classmate and close friend for ten years, who came from a deprived background, died when he was 15. His parents, who were daily-wage labourers, dreamt that their son would get a government job and deliver them from their financial struggles. Mariyappan was a bright student who always stood first in academics and an active athlete who had won many school-level and inter-school competitions.

When we were in high school, he gradually started expressing his femininity for which other mates teased him in school, which made his days dreadful and humiliating. A few staff tagged him as "pottai" or "onbathu" (local derogatory slang for transgender persons) and asked his parents to stop his schooling, at which the entire family was shattered. He stopped coming to school.

He lived in the outskirts of the village, known as "cheri" (slum, where the out-caste and discriminated people live), difficult to be accessed by proper road. However, after a month, I went to his house to know what had happened to him. To my shock, I found his photo garlanded. He had passed away two days before my visit. I felt so heartbroken, especially as I heard it was a mysterious death, to which his parents and siblings were a party.

A question that troubled my mind was whether he was killed only because of his feminine behaviours. It took years for me to understand about gender fluidity and identity. Today, I realize that among financially disadvantaged and socially discriminated communities, fluid and diverse gender identities is a dishonour that results in honour killings.

#2 My Son Is Not a Criminal

Stan (name changed), an ordained minister in my church, was my friend for more than 25 years, even as he was a smart and a jovial young boy. He was creative in his rendering of scriptural passages and theological concepts. We have debated and clarified various topics, including academic questions that he had struggled with. I often admired his in-depth Bible knowledge and his strong faith in God.

Stan's parents, who were teachers in a mission school, nurtured him in a conservative Christian setting. All of them were active in every church activity.

During one of my visits, his mother shared with tears that Stan was behaving differently and that he was relating only with boys, especially with one particular boy. On the one hand, she was worried since she thought that Stan's behaviour was culturally "abnormal," spiritually unacceptable, biblically sinful and legally criminal. On the other, as a Christian and a mother, she struggled to share this concern with anyone, including the local pastor. However, since she considered me part of their family, she told me about her plans to "correct him" by sending him to a seminary and, further, asked me to counsel Stan to "make him normal."

After a few years, on a beautiful morning in our chapel, I found him with a swollen face. I assumed he had cried all night and hence inquired why he seemed to be sad. Immediately, he broke down and told me that he was gay and that the boy with whom he had a relationship, a Sunday School mate, met with an accident and died. Stan felt empty and alone. Although those were the days when I could not accept gay relationships, which I thought was a sin, I did not condemn him. Instead, I wanted to help Stan to come out of this "sin."

After our studies, both of us left the college, and Stan joined the church. His mother, anxious at her son's "abnormal" behaviour with his members, thought he would become "normal" once he would get married, and hence started seeking proposals for him. Stan, scared by this move by his mother, asked me to talk to his mother and stop all efforts of getting him married. I assured him that I would talk to his mother, but within myself, I thought not to talk, since I considered that to be gay was a sin, and hence, he ought to change. Ultimately, he got married.

However, after the marriage, Stan honestly shared everything with his wife. She was shocked to realize her husband was gay, but being brought up as an Indian woman, she thought her duty was to accept the "fate." Thus, Stan and his wife agreed to continue their married life but to stay away from each other. Hence, Stan sent his wife to a distant residential study program while he stayed back and ministered at the local church. However, his congregation was not happy with this decision and persuaded him to leave the pastoral ministry to take up a cross-cultural ministry abroad, where they thought he would not face any stigma.

Owing to their advice, Stan left for Australia and started ministering there as an openly gay pastor. For many years, Stan did not contact any of his family members, friends or relatives. After several years when he tried to contact his mother, she forced him to return. He refused, since he knew that the cultural and spiritual stigmatization and discrimination that prevail in India would harm not only him but also his family.

Recently, his mother called me, and with all excitement, she said: "My son is no longer a criminal. Please ask him to come back." This happened soon after the Supreme Court repealed section 377 of the *Indian Penal Code* (IPC). According to Stan's mother, Stan is **not a criminal.**

I am reminded of a narration recorded in Luke 15, where a father received and embraced his "lost" son with a grand celebration at home. It was time for Stan's mother to experience the same. Let us join such mothers in thanking God for the Supreme Court of India's judgment to repeal section 377. As she waits to celebrate her beloved son's return any moment, let us hope that Stan will return soon.

There are a few more real-life personal experiences that have often challenged and even disturbed me in my spiritual, theological, missiological and ministerial journey. Some of the questions that I have struggled with are as follows:

1. Is sexuality or sexual identity a sin? Is sexual identity a dishonour to a family, a society and a church?
2. If God created all, who created trans people? If God created all in God's image, whose image do trans people bear? According to trans people and People of Different Sexual Orientations (PDSOs), what could be the image of God?
3. If God is God of all and God for all, why are LGBTQIA+ people discriminated against and excluded?
4. Is the church that claims to be an inclusive institution a safe and secure space for LGBTQIA+ people?
5. Do our churches practise and promote exclusion?
6. If not the church, who will include the discriminated and excluded communities?
7. Can the church or theology discriminate anyone in the name of God?

These questions and learning have pushed me further to passionately work towards the "radical inclusion" of LGBTQIA+ people and other socially, religiously, historically and spiritually excluded communities. In this essay, I attempt to share and suggest a few theological and missiological perspectives regarding the radical inclusion of sexual minorities, especially in light of my learning from and with them.

Scanning the Contexts

There is a rising awareness among churches and global theological fraternities on engaging in and dealing with issues related to sex, sexuality, homophobia, LGBTQIA+ people, PDSOs, gender minorities and queer theologies. Academia has already started re-reading Christian scriptures and their interpretations from perspectives of the discriminated communities — to the extent of supporting same-sex marriage and the concept of living together. However, for any faith community, including traditional Christianity, conversations on sex and sexuality are taboo, and there is great reluctance to speak or teach them openly. They are usually discussed in private because sex is seen as dirty, vulgar and not a topic to

be discussed in public, especially in front of children and particularly girls. It is still forbidden to the extent of being judged as a moral issue and is often assumed to be a culture imported or imposed by Western societies to disfigure Eastern culture and spirituality. It is a challenge to faith communities in the East, including Christians, especially considering the subcontinent tradition, culture and context.

Indian Conversations on Radical Inclusion

In India, the *Kama Sutra,* probably composed by Vatsyayana, between 400 BCE and 300 BCE, prove that the Aryan-Hindu tradition has had a conversation on sexuality.[1] It is considered as one of the oldest serving Hindu texts on erotic love (eroticism) and emotional fulfillment in life. The *Kama Sutra* is predominantly a sex manual on sexual pleasure. It was written and given as a guide to the art of living, the nature of love, finding a life partner, maintaining one's love life and other pleasure-oriented aspects of human life.[2]

Further, the statue depictions in the Khajuraho temples (in caves), dated back to 950 CE and 1050 CE, illustrate the idea of life that engaged aesthetic, erotic and inspirational love-art outside and inside the temple.[3] Many historians state that these erotic arts are part of depicting in a Hindu temple the Aryan-Hindu tradition of treating "kama" as an essential and proper part of human life. For instance, James McConachie, in his history of the *Kama Sutra*, describes the sexual-themed Khajuraho sculptures as "the apogee of erotic art."[4] Many other Hindu temples have such statues and depictions in outside towers and inside pillars and walls, which the devotees touch and worship.

Therefore, faith-based conversations on sex and sexuality were prevalent in the Hindu tradition, although absent in contemporary public conversations. In Islam and Christianity, even though there are several literatures that deal with sexuality, they remain in the dark.

A Historical Survey of Ecumenical Conversations on "Radical Inclusivity"

The World Council of Churches (WCC) took up the discourse on sex and sexuality at least 50 years ago. In 1968, at the Uppsala Assembly, there was a discussion on birth control. Reflections on "alternative lifestyles" in an ecumenical consultation on sexism held in Berlin in 1974 further inspired the WCC to address sexuality theologically. In 1975, the Nairobi Assembly formally called for "a theological study of sexuality, taking into account the culture of the member churches." Thus, for over a half-century, the WCC has been holding conversations on sex and sexuality. Due to the diverse culture and tradition of its members, the WCC could not come to a consensus but created a space for all sexual orientations to come together, discuss and participate in these deliberations.[5]

In 2009, the Christian Conference of Asia (CCA) in its discussion paper on

pastoral guidelines to HIV and AIDS, noted and proposed:

> *One of the challenges for what the churches can do is "to seek to understand more fully the gifts of human sexuality in the contexts of personal responsibility, relationship, family and Christian faith." We can no longer ignore the importance of discussing these gifts of God in Churches. We need to uphold mutual respect in all forms of relationships.*[6]

There were several such discussions held for years among the churches. In the context of an ecumenical dialogue, it is reasonable to note that the Anglican Communion and the Roman Catholic Church have, over the last 80 years, adopted different stances on some matters related to marriage, relationship and sexuality.

It is interesting to note that the Anglicans were far ahead in discussing the issues in the early 1930s. At the Lambeth Conference of bishops held in 1930, the majority of those present overturned the decision they made a decade earlier and affirmed the use of contraception in marriage in restricted circumstances (Resolution 15 and Resolutions 9–20). The Anglicans were the first to move on this and were condemned by the Pope within months (Pope Pius XI promulgated *Casti connubii* on December 31, 1930). However, over the succeeding decades, the Anglican stance was embraced by several Protestant churches.[7] Bishop Peter, Bishop of the Diocese of Ecumenical and Old Catholic Faith Communities, writes in his Pastoral Letter on Human Sexuality: The Sacred Body:

> *[...] the Christian understanding of sexual morality, like many other issues in Christian teaching, has developed over time. What remains consistent is the standard of measure, which is love. In order to clarify and contextualize our understanding of same sex relationships in the life of the Church, we have used the great commandment of love to frame our faith journey.*[8]

Concerning ecumenical conversations about sexuality, the National Council of Churches in India (NCCI) in 1990 deliberated on several related themes such as family, women, girl child (sexual) abuse, sex tourism, family planning, premarital and extramarital affairs, and abortion. At one point, the NCCI initiated an open conversation on the rights of PDSOs, which vehemently critiqued the traditions and practices of the church to the extent that the statement was banned from circulation. After almost a decade, in 2003, the Ecumenical Christian Centre (ECC), Bangalore, and the Student Christian Movement of India (SCMI) initiated different conversations. The ECC issued an epistle to Indian churches to consider human sexuality as a missiological and ministerial issue.[9]

From Ecumenical to Personal

The pioneering attempts to facilitate Indian churches to have a few conversations on the aforementioned issues related to sex and sexuality had a very marginal impact on the churches, since the statements and research documents were shared among only a few organizations and partners. However, these ecumenical documents moulded my theological and ministerial orientation, as a result of which, in 2003, while serving at the ECC as deputy director, I organized a seminar on "families in transition." This seminar, which dealt with themes such as gender fluidity, same-sex orientation and family, was received with mixed responses.

The year 2009 was a pivotal year for the "inclusive" life and work of the churches in India. On July 2, 2009, the High Court of Delhi pronounced a historical judgment that legitimized consensual homosexual activities between adults. This judgment overturned the 150-year-old IPC section 377, which considered same-sex relationships as dehumanizing and criminal. The secular ideologists welcomed the judgment as they thought it would pave the way to respect the dignity of persons with different sexual orientations and help them to come out openly to avail of health-care and other such services to have better lives. However, various faith communities, including the church, opposed the judgment and issued statements based on their respective scripture and moral value systems.

Several media sought a response to this verdict from the NCCI, and I, being the then executive secretary for the Commission on Justice, Peace and Creation, was asked to formulate a statement. The statement, thus drafted, assured to study the verdict and the issue in deep, as well as to facilitate discussions on the issue with the member churches and organizations. While the progressive, secular movements and leaders welcomed the move, several member churches, leaders and other faith communities thought the move was heretic, misleading the NCCI.[10] Some of the churches and Regional Christian Councils issued press statements rejecting the proposal and demanded the NCCI to drop the study proposal. In many places, the churches burnt the effigy and threatened the NCCI that they would withdraw their memberships. Anonymous letters were sent to NCCI officials against the statement as well as against me. I was also morally abused. Although initially, I felt disappointed by these responses and reactions, ultimately it motivated me to engage fully, openly and transparently in this study process, with a conviction to learn and to teach.

The study process, thus initiated, gave me rich spiritual experiences. The outcome of my study has benefited the churches inside and outside India to consider a few paradigm shifts in their missional and ministerial approaches: From Great Commission to Great Commandment, Morality to Ethics, With Text to Experience, Rites to Rights, From Conventional to Contextual, and From Preaching to Practice. I share this case for any church or organization to work towards inclu-

sion. The bottom line for this missiological shift was not mission **to** the margins but **from** and **with** the margins, in as much as the so-called margins become the centre and personal faith experiences become post-canonical scriptures.

From Great Commission to Great Commandment

The churches encourage the pew to get involved in the "great commission" (preaching the gospel) as a missiological activity and often overlook the "great commandment." An interface between church leaders and LGBTQIA+ friends was held to have a better understanding of both. For most of the bishops, it was a first-of-a-kind experience, listening to the stories of LGBTQIA+ people and their expectations from the churches. Most of the church leaders thought that the LGBTQIA+ community was another outreach ministerial sector to minister and proselytized. But they were challenged by the following faith questions of their LGBTQIA+ friends:

1. If churches close their doors for us, where will we go?
2. If churches are not embracing us, who will?
3. If churches close their ears to us, who will hear our cries?
4. Can you deliver us from our "closets"?
5. Can you become that confidential partner to whom we could share our pains and difficulties, when even our parents and family members fail to be so?
6. If the God of the Bible is one who loves and accepts and embraces everyone on the earth, irrespective of their limitations, can the Church oppose that God?
7. If you believe that God is the ultimate judge, how can you judge us on our sexuality?
8. Can you rethink your theologies and moral codes that prevent us from our right to worship and participate in the mission and ministries of the church as any other humans?
9. Can the "real" church exclude anyone?

These questions not only challenged the church leaders but also gave them a new vision and understanding of the mission and ministry relevant to our times. The bottom line of this conversation was whether the church was "love-all" and "all-inclusive." Most surprisingly, there was a shift in the thought process among the church leaders to work on the great commandment instead of the great commission.

From Morality to Ethics

All faith traditions claim they are the guardians of the moral conscience of their faiths and adherents. During several interfaith conversations and interactions

concerning human sexuality, leaders representing faith communities contend any such conversations. For instance, many church leaders consider human sexuality a matter of sin and unbiblical; same-sex activities are a sin and unnatural. They tend to reject any conversation on sexuality as ungodly. The court verdict repealing IPC section 377 would result in moral chaos for them. They believe that faith communities have the moral responsibility to help the society from such moral chaos.

However, they often forget that such moral and legal positions were even questioned by Jesus Himself, who asked if the law was for people or if people were for the law. Faith traditions often forget that people are more essential than moral codes. They always elevate moral codes to judge all, forgetting that judgment belongs to God alone. The biblical message is clear: one needs to look at such issues ethically rather morally.

With Text *to* Experience

An interfaith round table on human sexuality helped the faith traditions to understand and explain why they should get involved in such conversations. It was a profitable experience for representatives from the seven major faiths in India to study scriptures of different faiths together. The participants realized that the problem was not with the scriptures, which were often very inclusive, but with the interpreters, who promoted exclusion in the name of morality and God. The delegates resolved to move with text to experience, which were to be considered as the post-canonical scriptures and sources to articulate theologies.

Most of the theological articulations are canonical text–bound; i.e. the biblical and scriptural texts are considered the source to articulate any theology. The theological round table on human sexuality, attended by both professional theologians and friends from the LGBTQIA+ community, created a new scope for Indian theologies in the making. This program was designed as an academic exercise to listen to renowned theologians and scholars from biblical, theological, ethical and ministerial perspectives, with representatives of the LGBTQIA+ community as the audience. After listening to scholars, the friends from the LGBTQIA+ community said those presentations were irrelevant and had nothing to do with their lives. Hence, there was a shift suggested to listen to them. They were asking the theologians and academics to answer the following simple questions:

- Why did God create us like this?
- What could be the image of God for a transgender person if all are created in God's image?

Unfortunately, the scholars could not justify their articulations. Such simple theological questions overturned the table again. But at the same time, theolo-

gians and scholars have realized the need for an open acceptance of the realities without any academic arrogance. The theologians present agreed to hold personal experience as the source to articulate theologies related to human sexuality referring to biblical texts instead of interpreting the texts alone without any experience. Further, there was also a general sense that only the LGBTQIA+ friends and their families could subjectively get involved in articulating their theologies, not just non-LGBTQIA+ professional theologians engaging in an armchair intellectual exercise.

Rites to Rights

Most of the ecclesial confessions give importance to rites rather than rights. Modern missiological thought strongly affirms that there is no gospel without justice. In most cases, church leaders discuss sex scandals against clerics and how they are targeted. In fact, one has to wonder whether churches are aware of and capable enough to address issues related to LGBTQIA+ people, sex and human sexuality. In most cases, it was identified that the clerics were the reasons for such problems. However, what concerns us more is that the churches are still on their traditional mode, considering sex as a sin. Even many seminaries and theological colleges do not train theological candidates to handle such situations efficiently, professionally, scientifically, honestly, biblically and theologically. In many cases, our LGBTIQ+ friends are kept away from the very life and work of the churches and cast as sinners.

Hence, a theological training was organized for theological educators to emphasize the importance of these particular concerns while training candidates for pastoral ministry in seminaries. To motivate the theological students and seminaries, we developed an (optional) undergraduate theology course curriculum on human sexuality for the Senate of Serampore College (University), with which 58 theological schools in India, Sri Lanka, Bangladesh and Nepal are affiliated. We organized a few pedagogy workshops for theological educators to further plan and work on the theology of sexuality along with the local congregations. This attempt was aimed at facilitating the ecclesial confessions and theological schools to affirm the gospel that assures the rights of any individual and group to worship and fully participate in the very life and work of a church.

From Conventional to Contextual

The study mentioned above resulted in drafting an *Ecumenical Document on Human Sexuality,* which was officially adopted and issued by the General Assembly of the NCCI. As it is the practice, the document was sent to the heads of the churches to be read in every pew. Among several feedback that we received, one response was that the document was so theological that the laity could not follow

and understand it. The pew was looking for a document with biblical interpretations, especially dealing with the critical biblical passages on human sexuality. Hence, a workshop was organized to generate a few Bible studies. Ten Bible studies by 30 post-graduate theological students and pastors were published to benefit the laity. These Bible studies accompanied the theological document to make it relevant and contextual.

From Preaching to Practice

The church, in general, is often blamed for not practising what it preaches. As the NCCI engaged in this study process through several seminars and programs, many suspected if one could practise what we had deliberated and developed concerning human sexuality. Therefore, in order to put our preaching into practice, we campaigned among members of the governing body to have representatives from excluded communities, such as people with disabilities and LGBTQIA+ people, in the Quadrennial Assembly, the highest decision-making body where over 500 top-level Indian church leaders assemble to contemplate prevalent issues and to officially respond shortly. The proposal was welcomed, and the executive committee of the NCCI decided to invite two persons to represent the LGBTQIA+ communities to the General Assembly as official delegates. The presence of the LGBTQIA+ friends not only created history in terms of the assembly procedures but also helped the representatives to experience inclusion. Further, their presence in the Assembly greatly influenced National Church leaders and Assembly participants. One of the LGBTQIA+ representatives wrote to the president of NCCI about their experience.

> *We were looked down and avoided by the Assembly delegates on the first day. The second day people started smiling at us; on the third day, when we were called up to the dais and honoured, we became celebrities, and most of the participants including many women and bishops have taken photos with us. We would like to have a similar experience in our churches too.*[11]

Further, as an attempt to practise our preaching, it was proposed to initiate an official program forum of sexual and gender diversities, which could be part of the NCCI program structure. The proposal was very well received, and the General Body accepted the proposal. To mark the centennial journey of the NCCI, at the concluding celebration on November 6, 2014, the National Ecumenical Forum for Gender and Sexual Diversities was inaugurated by the NCCI president as a standing forum of the NCCI. This forum planned for a pre-assembly on the eve of the NCCI's XXVIII Quadrennial Assembly to deliberate on the theme "towards inclusive rainbow churches." That year, the Assembly had 10 sexual minority representatives as official delegates. This further motivated several churches to

become inclusive by appointing transgender friends in their institution to affirm their dignity and accompany them ministerially.

The interactions impacted the churches to understand the need for "radical inclusion" more biblically, theologically and ministerially. There were times of heated arguments, accusing each other, vehemently opposing each other's position and lifestyles, which made the sessions vibrant with cross-learning exercises. These conversations have helped church leaders and our LGBTQIA+ friends to understand each other's expectations. These initiatives and interventions paved the way for several theologians and church leaders to engage in conversations in person with friends from the LGBTQIA+ community for better understanding that helped them to look for shifts in their biblical, theological and missiological outlooks towards "radical inclusion" as mentioned above.

Conclusion: A Need for Radical Inclusion

In light of the above discussion, the following concerns motivate us to work toward "radical inclusion."

1. If the church closes its doors for these neglected, stigmatized, discriminated communities, who will embrace them?
2. Can the church exclude anyone in the name of God?
3. LGBTQIA+ individuals and groups are to be ministered with utmost care in sharing the love of God through pastoral-praxis.
4. Judgment belongs to God. Why should we judge others on their orientations?
5. Every individual has a right to worship, pray and participate in the very life and work of the church. Hence, LGBTQIA+ individuals should have an experience of worshiping in Spirit and Truth through the life and work of any church.
6. Let the church be an instrument to express the inclusive nature of God.
7. Radical inclusion should be the missiological agenda of the church today.

Here I Stand

I always go with my convictions. My position on the issues of LGBTQIA+ people, sex and sexuality continue to hinder the institutionalized church from embracing me. In fact, after my NCCI assignment, my church was not willing to accept me as a priest. Many mission (evangelical) organizations rejected my candidature because of my stand on LGBTQIA+ issues, sex and sexuality, and the church. However, like Martin Luther, I, too, boldly say, "Here I Stand." I join Martin Luther King, Jr., in saying, "I, too, have a dream" — of an inclusive church: a church *of* all, *for* all and *with* all. Amen.

Christopher Rajkumar, an ordained minister of the Church of South India, served the National Council of Churches in India (NCCI) as its Executive Secretary for "Justice, Peace and Creation," and "Mission, Ecumenism and Diaconia" for a decade. While he served the National Council, he initiated a two-year theological and missiological study concerning the response of churches to human sexuality. After the study, he facilitated the National Council to have the "National Ecumenical Forum of Gender and Sexual Diversities" as an official programme of the NCCI. He served as its first director of the same. Currently, he is serving as the founder-director of the "Centre for Promoting Peace and Inclusion."

1 J. Sengupta, *Refractions of Desire, Feminist Perspectives in the Novels of Toni Morrison, Michèle Roberts, and Anita Desai* (New Delhi: Atlantic Publishers & Distributers, 2006), p. 21.

2 W. Doniger, "The "Kamasutra": It Isn't All about Sex," *The Kenyon Review* New Series 25, 1 (Winter 2003): 18–37.

3 UNESCO announced this site as a World Heritage site. See P. Dey, "Khajuraho Temples are more than just erotic; here are some interesting facts," *Times of India,* July 12, 2019. Available at https://timesofindia.indiatimes.com/travel/destinations/khajuraho-temples-are-more-than-just-erotic-here-are-some-interesting-facts/as70192795.cms.

4 M.D. Rabe, "Secret Yantras and Erotic Display for Hindu Temples," in D.G. White (ed.), *Tantra in Practice* (Princeton, NJ: Princeton University Press, 2000), pp. 434–446.

5 World Council of Churches, "Churches' response to human sexuality," February 14, 2006. Available at www.oikoumene.org/resources/documents/churches-response-to-human-sexuality.

6 E.N. Senturias, *A Discussion Paper on "The Christian Conference of Asia's Pastoral Guidelines on HIV and AIDS,"* February 4, 2009. Available at www.cca.org.hk/news-and-events/discussion-paper-on-the-christian-conference-of-asias-pastoral-guidelines-on-hiv-and-aids.

7 http://newcastleanglican.org.au/wp-content/uploads/2015/05/Ecumenical_Dialogue_- _Human_sexuality.pdf (10/10/2011)

8 P. Stuart, "Pastoral Letter on Human Sexuality: The Sacred Body," no date. Available via http://ecumenical-catholic-communion.org.

9 "Ecumenical chronicle: An epistle on human sexuality to churches in India," *The Ecumenical Review* 56, 4 (October 2004): 513–518.

10 http://www.telegraphindia.com/1090805/jsp/frontpage/story_11322140.jsp (10/12/2009)

11 Bishop T.S. Sagar, "Next Century Indian Ecumenism," cited in C. Rajkumar (ed.), *Prophetic Ecumenism* (National Council of Churches in India, 2014).

Welcome One Another as Christ Welcomes Us

Rev. Alfred Candid M. Jaropillo

The World God So Loves

One Sunday afternoon, "Pastor," asked one gay member of the church, "does God really love me?"

This is a common question we hear from our youth LGBTQIA+ members who find themselves spiritually orphaned inside our churches.

Another question we often hear in our faith communities is from worried and anxious parents of LGBTQIA+ kids. "Pastor, will my son/daughter go to hell?"

Soul-piercing, this question indicates a spiritual crisis of families in our congregations. In a larger context, this spiritual crisis in our churches is also a social and political issue in the country. In a five-country research and documentation project on violence and discrimination against LGBTQIA+ people, Outright Action International classified this kind of religious experience (i.e. spiritual crisis) as a manifestation of violence. Particularly this violence is named as violence in the name of religion. Subtle and insidious, this violence corrodes and destroys self-confidence and self-worth. As seen in the questions above from the church youth or the parent, violence in the name of religion is spiritually troubling; and in many instances, it is a death-dealing reality for our LGBTQIA+ church members.

Sadly today, the world God so loves is marked with widespread violence committed against members of the LGBTQIA+ community. Crimes against sexual minorities have become a normal part of everyday life. The cry of Jesus on the cross, of forsakenness,[1] has become the cry of our LGBTQIA+ brothers and sisters.

Our Declaration of Faithfulness to Jesus Christ

The United Church of Christ in the Philippines (UCCP) pledges loyalty to no one but to Jesus Christ alone. Our commitment and conviction is anchored on this unswerving faithfulness to the crucified and risen Messiah whom we declare as God's self-revelation in history. Our participation to his mission and ministry of which we are called to be companions to one and each other on the way of the cross is our faithful demonstration and witness to God's will for all of us to have an abundant life for which the Holy Scripture also attests. Like many pilgrims in this faith journey, we are part of the clouds of witnesses testifying to God's sustaining and overflowing grace for all of us.

We thus make this theological statement on gender justice because we seek to renew our commitment and affirm yet again our faithfulness to Jesus our Lord and Saviour whom God anoints to bring good news to the poor, proclaim freedom

for prisoners and oppressed, give sight to the blind, exorcise our demons, heal our inadequacies, restore us to wholeness, grant mercy and declare forgiveness, and lead us all to liberation and salvation. In this pronouncement, we boldly declare our allegiance to the mission of the Messiah. As his disciples, we humbly walk with him to respond to the call of God to "do justice, to love kindness."[2]

If there was one policy statement of the UCCP that has stirred so much reaction, debate and alarm, as well as rejoicing among some sympathetic members, it is the 2014 approved statement concerning the LGBTQIA+ community.

The UCCP affirms that all, regardless of sexual orientation or gender identity and expression, are under the grace of God. In 2014, the UCCP unanimously approved Let Grace Be Total, a policy statement on lesbians, gays, bisexuals and transgender people at its 10th Quadrennial General Assembly and 66th Founding Anniversary.

We Are Created in the Image of God

Genesis 1:27 (NRSV) tells us that we are all created in the likeness and image of God. Thus, nothing in us is apart from God. Our whole lives bear divine imprint and traces of glorious radiance. God is in and through us. We believe, therefore, that human beings are *imago dei.*

Such is a gift bestowed upon us. That each and every human person is unique and irreplaceable, anointed and commissioned to represent and do holy goodness. Social categories and cultural classifications that separate and divide us by race, class, gender, sexuality, nationality or ethnicity, and even religious identity are only artificial human-made distinctions. In God, "there is no longer Jew or Greek, there is no longer slave or free, there is no longer male and female."[3]

As a church, we demonstrate this witness to the Filipino people through our "prophetic and pastoral witness in the life and culture of the Filipino people. The Church supports the people's aspirations for abundant life and holistic redemption from all forms of bondage, in accordance with the vision of the reign of God."[4]

To further testify to the biblical witness of our faith, the Church affirms and upholds "the inviolability of the rights of persons as reflected in the Universal Declaration of Human Rights and other agreements on human rights, the international covenants on economic, social and cultural rights and on civil and political rights, the 1984 Convention against Torture and other cruel, inhuman or degrading treatment or punishment, and those that relate specifically to refugees, women, youth, children, minority groups and other persons who cannot safeguard their own rights."[5]

Because Christ rejects no one, so should we. We welcome without condition each one and every other. For Christ welcomed us in the same abundant spirit without question. In the same way God so loves this world unconditionally.[6]

Marginalization, Exclusion, Discrimination of Members of Sexual Minorities: Those Whom We Have Not Loved and Welcomed

In our society, sexual minorities are either marginalized or excluded or discriminated against. Considered as deviants, members of the LGBTIA+ community have been the object of hate; viewed as abnormal, they are victims of bullying, harassment and sexual violence in our society. Those who are not victimized or hated are a source of fun and entertainment.

But they too are the silenced church members of the United Church of Christ in the Philippines. For fear of being ostracized and rejected by their Christian family, they remain hidden from plain sight. They live their lives privately and secretly away from the prying eyes and angry hearts of their Christian siblings.

Those who are openly out, while tolerated, are allowed in the church and ministry as long as they are useful to its activities. They are welcomed only if they conform to the heterosexual norm — to reject the life they have, know and feel is theirs. They have never been truly accepted for who they are as a human person. Demonized, they are only accepted by the church if they deny their personality and personhood and become someone else, not in accord to how they feel and how they understand who they are as a human being. They are only part of the communion in Christ if they become heterosexuals. They must convert and submit themselves to the ruling regime of heterosexism — a belief system and practice based on the idea that opposite-sex attraction and relationship is natural, normal and superior — for them to be accepted in the communion of saints and sinners.

In our churches, LGBTQIA+ members are not loved as much as God wants us to love one another (just as God loves all of us), and they are not welcomed as much as Christ has welcomed all of us. Our ecclesiastical life has been rather defined by a belief system that does injustice to the "least among us."[7] In our lukewarm tolerance and conditional welcome, we perpetuate gender injustice against them in our churches where unconditional welcome and abundant love should reign.

In the Philippines, as in many Asian countries, we live with the reality of gender differences in matters of sexual orientation and preferences, roles and biology. These differences are turned into justifications and bases for marginalizing, dominating, demonizing and inflicting violence on those who are different. How many lives have been claimed by violence against cis women and transwomen? How many gay men have been killed because they are hated and "sent to hell" even before their time? Gender issues are life-and-death concerns for many. Consequently, these are justice issues that all humanity should be concerned about.

The Spiritual Witness of the Church in These Critical Times

Our declaration of loyalty and confession of our sins cannot be complete

without the incarnation of our faith. We are members of the Body of Christ called to love and serve a hurting world. Each one of us is called to proclaim that God's love is for all people without exception and condition. We proclaim this love without reserve.

Thus, in the same way with Paul and the early church, we contribute to the mission and ministry of Lord Jesus Christ in the here and now. For the UCCP, education on human sexuality in our congregations can be an opportunity to put our faith into action and to be faithful to the mandate of our Church. The UCCP shall remain a progressive and prophetic church and thus will continue to work for inclusive justice and generous welcome and not mere tolerance of LGBTQIA+ people. It will do so by taking the following steps:

1. Reiterate the creation Sex-Gender Desk at the National Office to oversee the implementation of the Gender Justice Program at the jurisdictional and conferences level. The Desk shall implement the overall intent and spirit of the program: design study materials on human sexuality, facilitate training programs, forge networks with other like-minded cause-oriented groups and facilitate discussion and dialogue with other people of faith on gender justice.
2. Assign a Gender Justice Sunday in the ecclesiastical and liturgical calendar to encourage discussions regarding sexuality and spirituality through liturgy, preaching and teaching church ministries.
3. Support the Union Theological Seminary's Center for Gender and Sexuality and Silliman University Divinity School's Center for Theological and Biblical Studies on Human Sexualities in their work to provide more materials on queer theology. Encourage all other ministerial formation centres and affiliated schools and institutions of the United Church of Christ in the Philippines to establish an office or program that seeks to advance gender justice.

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[1] Psalm 22, Mark 15:34, Matthew 27:46 (New Revised Standard Version).
[2] Micah 6:8 (New Revised Standard Version).
[3] Galatians 6:28 (New Revised Standard Version).
[4] United Church of Christ in the Philippines, UCCP Constitution article II, s. 8. Available at https://uccphilippines.wordpress.com/uccp-statement-of-faith/declaration-of-principles.
[5] United Church of Christ in the Philippines, "Declaration of Principles," section 11.
[6] John 3:16 (New Revised Standard Version).
[7] Luke 9:48, Matthew 25:40 (New Revised Standard Version).

SECTION THREE

SOME GLOBAL NORTH EXPERIENCES

Intimate Convictions: Journey to the Future – 1998 to 2020

Rev. Michael Blair

The United Church of Canada is sometimes referred to as the church with the soul of the nation. It grew up with the emerging nation building of Canada. So, it is a church that is deeply imbedded in the soil of the nation. It is a church that is a part of the social gospel movement, and so it has historically been committed to the transformation of the social order. Some may say the Christianization of the social order, and from that perspective, it has made some mistakes; for example, its participation in the genocide of Indigenous Peoples. At the same time, it has learned from its mistakes and has tried in its inner life to model some of the changes it wanted to see in society. For example, it was the first church to ordain women in 1936. In 1929, women were declared "persons" under Canadian law. It has since offered two apologies to the Indigenous Peoples in Canada, and in November 2020 offered an apology to young unwed women who were forced to give up their babies for adoption in maternity homes run by the Church. And the United Church has engaged in a process to consider an apology to the LGBTQI2S community.

The Church has also been part of the founding membership of many Canadian and global ecumenical initiatives such as the World Council of Churches, the World Communion of Reformed Churches, and The Canadian Council of Churches, to name a few. All that to say, the church has a strong and valued reputation, is often seen as a leader, and has not been afraid to offer that leadership, often walking a lonely path in doing so.

Since 1988, The United Church of Canada, through a decision on "membership and ministry," has declared that sexual orientation is not an impediment to membership, and that all members of the Church are eligible to be considered for ordered ministry. Gender identity was added to this in 2009.

For more than 20 years, this decision set the Church apart from other mainline and evangelical denominations within Canada and around the world. It was not an easy decision to make: people were appointed to be delegates to the General Council with the expressed instruction to vote against any decision to allow LGBT(Q) individuals to serve in ministry. At the meeting in 1988, the decision split families and congregations. Many individuals left the church. Yet those who made the decision knew it was the right thing to do.

Because of the way the Church is structured, with the General Council being the highest council, not every part of the Church necessarily follows the direction of the Church. For example, in 2005, although the Church approved equal marriage, it was left up to individual congregations to decide whether to perform marriages.

The decision in 1988 did not come about unexpectedly. It began its journey toward the full inclusion of LGBTQ persons in the life and ministry of the Church through the lens of human rights. The scandal of a teacher losing his job because of his intimate relationship became the formal catalyst for the Church's engagement. Over the years, in addition to an examination of its understanding of scripture and its theological affirmations, the United Church has used a human rights framework to address issues of LGBTQ rights and freedoms.

Several factors contributed to the process:

1. Clarification of decision-making: The Church used what is known as the Wesleyan Quadrilateral (scripture, tradition, experience and reason) as an interpretative tool. The perspective on how to interpret scripture was critical to the Church's decision. In most jurisdictions where the Church is opposed to the full inclusion of all persons, this opposition is due to a literal rather than a contextual interpretation of scripture.
2. Storytelling: Members of the LGBTQ community and their allies were strategic in simply sharing their stories in non-defensive ways. These stories had a significant impact, as there was person-to-person interaction.
3. Internal advocacy: In 2012, the Church elected its first openly gay married Moderator; in 2015, it elected a married lesbian Moderator; and in 2020, it appointed its first openly gay General Secretary.

It is important to note that the separation of church and state is more clearly defined in Canada than in the Caribbean. Canadian politicians do not fear the church in the same way that Caribbean governments do.

Recall Canadian Prime Minister Pierre Trudeau's famous 1967 statement: "There's no place for the state in the bedrooms of the nation."

A significant part of the process for the Church was addressing the question of its colonial history and practices.

In 1969, Canada decriminalized homosexuality.

The United Church understands how churches and religious and faith communities are a significant obstacle to the fullness of life for all people. Thus, the Church has endeavoured to support faith communities as they seek to dismantle systemic barriers and create spaces to support the fullness of life. Over the past few years, The United Church of Canada has done the following:

- Organized regional meetings with church partners, to help them begin to understand the reality and experience of LGBTQ persons and to help them strategize on how to advocate for the basic human rights of individuals.
- Supported National Council of Churches in India, the Philippines and Korea in their efforts to encourage its member communions to open their imagination to biblical foundation to be welcoming and inclusive and to dismantle any attempt by religious communities to encourage

governments to violate basic human rights.

- Had conversations with the leadership of the Methodist Church in the Caribbean and the Americas, and The United Church in Jamaica and the Cayman Islands about their support of anti-buggery laws. This is an on-going process.
- Provided funding to the All Africa Theological Education by Extension program to support the reworking of curriculum to encourage a more contextual reading of scripture in order to support practices of inclusion.

These are a few of the Church's initiatives to create a culture of inclusion around the globe.

Rev. Michael Blair is a member of the Order of Ministry in the United Church of Canada and currently serves the General Council of the United Church of Canada as Executive Minister of the Church in Mission Unit. He is the General Secretary, General Council, a role he began November 1, 2020. Michael lives in Toronto with his partner, and is the father of two adult sons.

LGBTQ2+ in Canada: The Movement for Equality

Brent Hawkes

My experience with the interface between LGBTQ2+ human rights and religion goes back to 1976, when I first moved to Toronto. I started working at the Metropolitan Community Church of Toronto (MCC Toronto) and became the church's liaison to the LGBTI human rights movement.

It was very clear that for the LGBTQ2+ community, religious opposition was the enemy, and the broad religious community was mobilized to prevent any advancement to LGBTQ2+ human rights or inclusion. MCC Toronto and a few other religious leaders from the United Church of Canada and from some affinity groups from other denominations stood in between the two dichotomies.

What we experienced back then is very common to what we hear around the world, that the main opposition to LGBTQ2+ inclusion is religious-based homophobia and transphobia. It was also clear that whenever any argument was presented as God versus gays we would lose.

So it became my job and the job of MCC Toronto to present the case for religious support for LGBTQ2+ human rights and inclusion and to counter the attacks based on religious beliefs. The challenge was that there was very little support in the broader religious community, and the lack of awareness and discussion around basic human sexuality meant that many misconceptions and false narratives were being used.

The media became a crucial ally in terms of countering the misconceptions. We used a variety of approaches, including being very visibly present in debates, protests and submissions to governmental bodies; mobilizing support through petitions and press conferences (particularly profiling allies); and attempting to strongly make the case that many people of faith supported LGBTQ2+ human rights and inclusion, and those seeking to deny human rights were not representative of everyone in their faith traditions.

Initially, support was gathered from within the Christian communities, then Jewish communities, and ultimately Muslim and other faith communities.

Often, LGBTQ2+ communities necessarily put substantial resources into countering religious attacks and too often failed to also proactively build and promote religious support. It is crucial in the good times to be building that support so that it is there in the difficult times.

Promoting religious support is very effective in changing hearts and minds. We need to build the support rather than just react to the religious attack.

Over time, an increasing number of faith leaders joined our movement for equality. Whereas initially it consisted of predominantly retired clergy, eventu-

ally more and more active clergy began to speak out on our behalf. At first, the LGBTQ2+ community leadership were hostile to the inclusion of LGBTQ2+ people of faith in the movement. Eventually, they moved from skepticism to ultimately seeing the value of our not only being included but also playing a leadership role.

Political leaders, especially supportive ones, often felt under attack by the more right-wing religious elements, and they didn't have the language to counter the religious arguments. A very effective strategy was to develop petitions of religious leaders in support of LGBTQ2+ human rights, so that politicians could use those supportive petitions to counter negative religious arguments. It was obvious that a religious attack required a religious response, and so it was our job to mobilize that response again and again.

Ultimately the religious support for inclusion was viewed to be the mainstream and the opposition viewed as a fringe element.

Numerous times politicians would say that it was our mobilizing of support that made it possible for them to vote on legislation for inclusion. And increasingly, the media would turn to LGBTQ2+ people of faith for comments rather than exclusively reaching out to secular LGBTQ2+ leaders. This further broke down the argument of God vs. gays.

Helping LGBTQ2+ people of faith to be effective media communicators is crucial for shifting public opinion and for gaining the trust of the media. Another particularly effective strategy was to engage the most extreme opposition voices because the public, once they heard those extreme points of view, moved in favour of our position.

The current situation in Canada is that the United Church and Presbyterian church have voted for full inclusion. The Lutheran church and segments of the Anglican church are also pushing for inclusion, and there appears to be increasing support in more evangelical Christian communities. Young evangelicals in North America no longer care about homosexuality or abortion. They care about the environment and poverty.

We've also seen significant support come from liberal rabbis, Reform Judaism and even the Jewish Conservatives. There is also a very vocal and visible number of leaders within the Muslim faith who are speaking out for inclusion.

The public opinion polls in Canada have consistently shown us that one of the most supportive segments of society are Roman Catholics. Here I refer to the people and not the hierarchy. The first province in Canada to include sexual orientation in the human rights code was Quebec, the most Catholic province. The first state in the U.S. to give equal marriage was Massachusetts, the most Catholic state. And most of the first countries in Europe to give protections to LGBTQ2+ people and to support equal marriage were Catholic countries. The challenge is

that while Roman Catholic people have consistently shown so much support, the hierarchy has often shown significant opposition.

I've started a new organization, Rainbow Faith and Freedom (RFF), to confront and decrease religious-based homophobia in Canada and around the world, so that families and faith communities can be safer. We'll do that by changing hearts and minds.

I just wanted to give you some background on how RFF came about.

In 2015, I took a three-month sabbatical from MCC Toronto and focused on global LGBTQ2+ human rights. I visited over 10 LGBTI international organizations, allied organizations and numerous individual activists in New York, Washington and Geneva, including ILGA World – the International Lesbian, Gay, Bisexual, Trans and Intersex Association, Human Rights Watch, ARC International, the World Council of Churches, the Global Justice Institute, the International Gay and Lesbian Human Rights Commission, the Council for Global Equality, Soulforce, Center for Social and Information Initiatives Action, and the European Forum of LGBT Christian Groups.

I looked at the shape of LGBTQ2+ rights internationally, especially related to religious-based LGBTQ2+ discrimination. I discovered that most international LGBTQ2+ groups are secular and not addressing religious-based discrimination. I constantly asked if these organizations were proudly secular, and the response was usually yes. I followed up with a question about whether they were involved with LGBTQ2+ Christians, Muslims or Jews in the struggle for human rights.

The answer was usually no.

I then outlined my plan to start an international organization to combat religious-based LGBTQ2+ discrimination by changing hearts and minds. I asked if they would work with me and this new organization, and I received overwhelming support.

In 2018, I formed and led a steering committee that drafted the vision, mission, three key pillars and manifesto for the organization. RFF is a registered non-profit organization, and we have applied for charitable status. [Note that this application was approved after the conference and RFF is now a registered charity.] We now have a board of directors, several teams and partnerships with various organizations, including Global Justice Institute, Egale Canada Human Rights Trust, The Commonwealth Equality Network and GIN-SSOGIE (Global Interfaith Network for People of All Sexes, Sexual Orientations, Gender Identities and Expressions).

Our Canadian Pillar will transform equality in law into equality in practice through focused engagement with different sectors and institutions, such as faith-based organizations, health care settings and educational environments, which commonly perpetuate religious-based discrimination of LGBTQ2+ people.

Our Resource Pillar will offer multi-faith resources through an online portal to help drive community awareness, increase access to information, encourage inclusivity and facilitate progressive social change for people and communities both in Canada and abroad.

Our International Pillar will be based on a 20-year strategic plan in which RFF will partner with activists and organizations in selected countries to eliminate religious-based discrimination and establish full inclusion and equality for LGBTQ2+ people.

More than 70 countries in the world still criminalize same-sex intimacy, and in 10 of those countries, LGBTQ2+ people can be executed.

Religion got us into the mess, and religion needs to get us out of it. Thank you.

Rev. Dr. Brent Hawkes, C.M., is the Founder and Executive Director of Rainbow Faith and Freedom, and Senior Pastor Emeritus of Metropolitan Community Church of Toronto, where he was at the forefront of ministry to the LGBTQ2+ community for over 40 years. On January 14, 2001, he officiated at the first legal same-sex marriages in the world. He received the Order of Canada, the Order of New Brunswick and three honorary degrees for his stand on social justice and human rights within the LGBTQ2+ communities.

Afterword

Richard Elliott

There are still nearly 70 countries around the world in which same-sex intimacy is criminalized. Millions of LGBTQ+ people live in fear and in hiding, simply because of who they are. For too long, religion and "tradition" have been used to justify these homophobic laws — and there is something particularly perverse about defending these as part of national identify and culture even after independence from the colonial power that originally imposed such religion and laws. Thankfully, this is beginning to change in some regions, but there are many more where change is slow.

This is why conversations like the ones at *Intimate Conviction 2: Continuing the Decriminalization Dialogue* are so important. We must keep up the dialogue until the human rights of LGBTQ+ people are respected globally. Laws must be changed to ensure that all people are able to live freely and openly, secure in their sexuality and their gender identities, without fear of discrimination, violence, and persecution. The religious beliefs of some — which are even themselves contested within a given faith tradition — must never dictate the law of the land and thereby deny the human rights of others.

But more than this, in the case of those inclined to invoke religious injunctions to "justify" infringing others' freedom, it is important and necessary to explore other reasonable interpretations of their own tradition's texts, interpretations in keeping with own tradition's teachings emphasizing the values of love, respect, charity and dignity for all. In this way, there is some hope to appeal to the better angels of their nature, and to add to the growing numbers of people, of many faiths, who support an end to the criminalization and persecution of people based on their sexual orientation or gender identity.

We are grateful to all those who participated in the conference, those who logged in to join us, and those of you who are now reading and using this volume to advocate for equal rights for all. The work to overcome homophobia and transphobia, to put an end to unjust laws and to violence, is a long one and all can and should play a part. But we shall overcome.

Richard Elliott
Executive Director
HIV Legal Network

APPENDICES

Antilles Episcopal Conference Statement on Homosexuality and Homosexual Behavior

The contemporary political pressures to change legislation in order to decriminalize consensual homosexual activity are now present in the Caribbean Region. The discussions, already quite emotional, have raised two major issues for the Catholic Church. The first issue is that the people must understand the doctrinal/moral teaching of the Church on homosexuality. The second issue is that, in the context of the discussion to change legislation, the teaching of the Catholic Church on homosexuality must be communicated clearly, accurately and continually by the Church to the Caribbean Region.

Both issues are very important for the teaching mission of the Church, for the quality of life in society and for the pastoral care of homosexual people. Because of the experience of the Church following decisions, whether legislative or judicial, regarding policies on issues concerning life, the Church is keenly aware of the need for clear communication. Why? Because, unfortunately, sincere but uninformed people tend to operate on the assumption that what is legal is also moral. Consequently, the Church must publicly confront the educative dimensions of legislation and judicial decision in a respectful but thorough manner in the public forum.

We, the Bishops of the Antilles Episcopal Conference, are very aware of our obligation to offer guidance on doctrinal and ethical matters to the Catholic Community and to invite all people to consider Catholic Teaching, which is rooted in both revelation and in human reason. The Church must proclaim the truth no matter how strongly political pressure, public opinion and/or public morals oppose it.[1]

Catholic Teaching on Homosexuality

Biblical/Doctrinal

The Catholic Teaching on homosexuality has its foundation in the Church's understanding of the Natural Law, and in the theology of creation found in the book of Genesis. God created the human person in his image and likeness. In the complementarity of the sexes, God's people are called to reflect the inner unity of God and, by a mutual gift of self to the other, to become collaborators with God in the transmission of life. With original sin there was a loss of awareness of the covenantal character of the union of people with God and with each other. While the spousal nature of the human body continued to be the biblical teaching, its appreciation was clouded by sin.[2]

There is an obvious consistency in Old Testament and New Testament salvation history about the moral unacceptability of homosexual relations. The biblical

testimony can be found in Genesis 19, 1-11; Romans 1,18-32; I Corinthians 6, 9; I Timothy, 1, 10. The Church, ever faithful to the data of revelation, teaches that these texts communicate immutable moral principles. The Church has consistently taught that even heterosexual union is only legitimate when a community of life has been established between the man and woman in marriage.[3] The teaching of the Church on marriage has a clarifying application to the issue of homosexuality. Since homosexual relations cannot reflect the complementarity of the sexes intended by God and openness to the transmission of life, they are contrary to the creative designs of God. A person who engages in homosexual behavior acts immorally.[4] The Catholic tradition teaches that homosexual acts are intrinsically disordered. Under no circumstances can they be approved.[5]

Moral/Pastoral

The moral/pastoral dimensions of Catholic Teaching on homosexuality are, of course, rooted in the biblical/doctrinal teaching of the Church. The Church has always made a clear distinction between sexual orientation and sexual behavior. Sexual orientation is morally indifferent while homosexual behavior is immoral, objectively speaking. Although some, possibly many, of those who are trying to have the homosexual behaviour accepted as though it were not disordered are subjectively sincere, the moral theology of the Church has consistently taught that morality does not depend solely on the intentions of the person. The nature of the act must be considered. Homosexual acts do not conform to the truth about the human person. They are contrary to the creative plan of God about the complementarity of the sexes or to the openness to life intrinsic to sexual relations within marriage. While the subjective capacity of an individual may reduce or even eliminate moral culpability, the moral nature of the action does not and cannot change.[6]

While the Church is obliged to preach the truth, it is also obliged by the love of Christ to provide quality pastoral care to persons who have a homosexual orientation and who may be struggling with homosexual behavior. The Church understands the intensity of the struggle many homosexual people experience and also the psychology of compulsive behavior which, at times, is applicable in individual cases.[7] Therefore, the Church encourages prayer, a full sacramental life, offers spiritual direction, counseling and support to homosexual persons as they journey through life. It educates parents who also struggle when they discover one or more of their children are homosexual.[8]

Discussions on proposed changes in legal norms regarding homosexuality, whether by legislation or judicial decision, can be highly emotional especially in terms of discrimination and violence against homosexual persons. The Church has condemned, authoritatively, discrimination and violence against all people including homosexuals.[9] Many are opposed to decriminalizing adult consensual

homosexual activity because they are convinced that a not so subtle agenda is operative in international society — an agenda which is trying to make the homosexual lifestyle a valid life option to heterosexual union in marriage. Society must process all aspects of the debate but without discrimination or violence. **No matter how the debate on decriminalizing adult consensual homosexual activity ends, the teaching of the Church will remain unchanged and the pastoral outreach of the Church will continue to manifest the reconciling love of the Lord**.[10]

We, the Bishops of the Antilles Episcopal Conference, respectfully offer this Statement on Homosexuality and Homosexual Behavior for prayerful reflection.

Signed:

Most Rev. Edgerton R. Clarke, Archbishop of Kingston in Jamaica, President
Most Rev. Lawrence Burke, S.J., Nassau, Vice-President
Most Rev. Kelvin Felix, Castries
Most Rev. Edward Gilbert, C.Ss.R., Port of Spain
Most Rev. Paul M. Boyle, S.J., Mandeville
Most Rev. Kevin Britt, Auxiliary (Detroit)
Most Rev. Sydney Charles, St George's
Missio sui iuris of the Cayman Islands
Most Rev. Charles Dufour, Montego Bay
Most Rev. Malcolm Galt, C.S.Sp., Bridgetown
Most Rev. Robert Kurtz, C.R., Hamilton
Most Rev. Donald Reece, St John's-Basseterre
Most Rev. Robert Rivas, O.P., Kingstown
Most Rev. Luis Secco, Coadjutor, Willemstad
Most Rev. Louis Sankale, Cayenne
Most Rev. Benedict Singh, S.J., Georgetown
Most Rev. Aloysius Zichem, C.Ss.R., Paramaribo
Most Rev. Samuel Carter, S.J., Archbishop *emeritus,* Kingston in Jamaica.

Edinboro, St Vincent.
May 11, 2001

[1] Sacred Congregation for the Doctrine of the Faith, "Declaration on Certain Questions Concerning Sexual Ethics," December 29, 1975, Section V. Hereinafter cited (CDF, 1975).

[2] Sacred Congregation for the Doctrine of the Faith, "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons," October 1, 1986, N. 5. Hereinafter cited (CDF 1986).

[3] CDF, 1975, Section VII

[4] CDF 1986, N. 6.

[5] Catechism of the Catholic Church, N 2357

[6] CDF, 1975, Section VIII

[7] National Catholic Bioethics Center, Proceedings from the 17th Workshop for Bishops, "Addiction and Compulsive Behavior," November 21, 2000, pages 225-238 - Homosexuality and Compulsion.

[8] National Conference of Catholic Bishops, Committee on Marriage and Family, "Always Our Children," September 10, 1997

[9] CDF 1986, N. 10

[10] Communication of Church Teaching

The communication of the Church's teaching on homosexuality and homosexual behavior is very important because of the powerful educative dimensions of legislation and judicial decision and the ability of the media to undermine truth by trivializing the sacred.

While the communications capacity of the Church may not be able to match that of secularized society and its media outreach, it is still formidable. The Church must learn from the debate on life issues and use its substantial infrastructure to alert people to the real issues in the discussion about homosexual behavior. It must educate people to the truth component in contemporary debates and share the wisdom of the Catholic Tradition in every possible way. However, the communication must be accomplished with gentleness and respect because the ministry of the Church is fundamentally about bringing the salvation offered by Jesus Christ to all people but especially to those who feel abandoned and rejected.

AEC Statement on Marriage: A Covenant Between a Man and a Woman

Introduction

We, the Bishops of the Antilles Episcopal Conference, joyfully greet the faithful of all the various Arch/Dioceses of the Antilles Episcopal Conference with the words of the risen Christ addressed to his apostles: "Peace be with you!" [John 20:21].

Following on from the 2014's Extraordinary Synod of Bishops, in 2015, the Holy Father, Pope Francis will convene a Synod of Bishops in Rome to study and reflect upon the reality and importance of the family. To that end, we, your bishops, wish to make clear the Church's teaching on the nature of marriage and the family in God's plan. The Catechism of the Catholic Church teaches: "Marriage and the family are ordered to the good of the spouses and to the procreation and education of children...A man and a woman united in marriage, together with their children, form a family" [CCC # 2201 & # 2202].

The holy institution of marriage thus understood is the very cell of society and Church life. We, therefore, commend and salute those who espouse this noble vocation which is beautiful and at the same time inspirational when lived faithfully, in spite of difficulties and hardship encountered because of its self-sacrificing nature. For that reason, Vatican Council II reminds us thus: "Christ our Lord has abundantly blessed this love, which is rich in its divine love and modelled on Christ's own union with the Church" [Church in the Modern World, #48]. We pray that married couples will never tire witnessing to their being "a union of loves in the service of life." Indeed, this is a lifestyle worthy of praise and our whole-hearted support!

We wish to reach out to our brothers and sisters who espouse a lifestyle that is contrary to the divine teaching proclaimed by the Church from time immemorial. As your bishops we wish to affirm that you are loved and blessed by God with many gifts and talents which have enriched both Church and society.

We also admit that we cannot begin to appreciate fully the extent of the pain, anguish and trials that you daily undergo, especially within the atmosphere that is prevalent in the Caribbean. Like Pope Francis, we, too, sincerely hope that you — like us — will seek to know and love personally the will of God who embraces all his children, without exception, with a love that surpasses all understanding.

The Love of God.

This is the basis of God's laws and commandments which have as their objective the total fulfilment or happiness of persons. The Church recognises the fact that God always reveals his designs for his creatures which are made in the very image of God [Gen.1: 27]. When we begin to fathom the beauty of this teaching and how it impacts upon people's situation, it leads us to consider two aspects of God's revelation: Creation which determines the law of nature; Redemption or re-creation which pertains to the divine positive law consonant with the salvation and glorification of humanity.

Creation [Law of Nature].

It is evident from the species created that there is some set order that regulates and furthers the on-going creation set in motion by God, the Creator. Both inanimate and animate beings are regulated by a certain design that is enshrined in the very act of creation [cf. Gen. 1: 11-12; 24-25]. Of interest is the fact that all are created according to their kind. Most importantly, "God created man in his image; in the image of God he created him: male and female he created them" (Gen. 1:27). They are created to complement one another and are explicitly directed to multiply and care for the earth [cf. Gen. 1:28]. For believers — be they Jewish, Christian or Muslim — this creation story undergirds the essence of marriage and the family.

Redemption [Divine Positive Law].

The Ten Commandments are the basics of the divine law, the objective of which is proper relationships with God and with fellow human beings. The Saviour sums up the Decalogue under the Great Commandment: love God and love neighbour [cf. Dt. 6: 4-5; Lev. 19: 17], all of which culminates in the redemptive death and resurrection of Jesus, which ushers in a new life welling up into eternal life. This Great Love Story of salvation could be considered as God embracing all of humanity with an everlasting love. Dare we say that married love between man and woman reflects this beautiful union?

By his saving death and glorious resurrection, Jesus has liberated humankind from the innumerable burden of laws and regulations which were meant to safeguard God's covenanted relationship with mankind. However, in no way was license intended, as St. Paul reminds the early Church: "After all, brothers, you were called to be free; do not use your freedom as an opening for self-indulgence, but be servants to one another in love, [Gal. 5:13]. Clearly St. Paul gives us an indication of our relationships with one another, a relationship that is based on love that is Christ-related.

The Gender Debate.

Having established ever so briefly the context, within which Christians should conduct themselves, be they married or single, we wish to comment on the topical issue of gender. It must be clearly established that all human beings, be they male or female, young or old, are endowed with inalienable rights, but rights, however, that must not infringe upon the rights of other human beings nor undermine the common good of society. What are some of those rights? The right to freedom of expression, right to freedom of religion, right to marry and to have a family, the right to an education, health care, housing, and employment. Without such rights life would not be worth living!

To sum up, then, the right to life is the most fundamental of all rights; all others are predicated on that right to life that ensures the integrity of one's dignity which is imparted neither by Church nor State, but by God, the Creator. Each person, male or female, is equal in the pursuit of those rights that ensure fulfilment of one's potential, but it must be remembered that with rights come responsibilities. For Christians, such responsibilities entail their relationship with God, and are expressed by acts of reverence, respect, and acceptance of God's will which is enshrined both in natural and divine positive laws. No one has a right to contravene natural and divine laws. Doing so leads to our peril and the determination of family life and society.

Marriage as Covenant between Man and Woman.

Within the wider context of gender, we return to the question of Marriage. We do so because world-wide there is much discussion with a view to altering the age-old tradition of this far-reaching relationship that affects the very existence of the human race, civil society, and the Church. Marriage between one man and one woman is not only a Christian institution. It is also pre-Christian and is recognised as the ideal means and context whereby children are raised with love that is both masculine and feminine [to correspond to the masculinity and femininity of each person], and educated for their rightful role in the society. Christ himself recognised and raised this complementary union of man and woman to the level of a sacrament — not just as a contract but a covenant. We never tire to reflect on this marital union as one that signifies the great mystery of covenanted union of Christ and his Church [cf. Eph. 5: 21-33].

Same-Sex Union

One of the "rights" being promulgated aggressively today in our Caribbean Region is the union between persons of the same gender. Notwithstanding our age-old tradition of marriage that ensures the propagation of the human race and the promulgation of our civilisation and culture, same-sex union is being pro-

moted by very powerful forces, as a "civil right" and an alternative form of "marriage." In reality "Legal recognition of homosexual unions or placing them on the same level as marriage would mean not only the approval of deviant behaviour, with the consequence of making it a model in present-day society but would obscure basic values which belong to the common inheritance of humanity. The Church cannot fail to defend these values, for the good of men and women and for the good of society itself."[1]

Given the fact that assets are jointly owned by persons espousing such a union, the Church recognizes the justice issue thus entailed. Nonetheless, in this regard the Church's teaching remains clear: "Nor is the argument valid according to which legal recognition of homosexual unions is necessary to avoid situations in which cohabiting homosexual persons, simply because they live together, might be deprived of real recognition of their rights as persons and citizens. In reality, they can always make use of the provisions of law — like all citizens from the standpoint of their private autonomy — to protect their rights in matters of common interest. It would be gravely unjust to sacrifice the common good and just laws on the family in order to protect personal goods that can and must be guaranteed in ways that do not harm the body of society."[2]

The Mission of the Church.

Does that mean that the Church is not concerned about men and women having such an orientation? Of course not! The Church's role is to proclaim the Truth, "in season, out of season" [2 Tim. 4:2] to each and every person who would listen to the Word of God being proclaimed. It is that proclamation received in faith that will bring about a deeper understanding of the Truth that the Holy Spirit wishes to impart to every human being in the quest of happiness and peace. Hopefully that deeper understanding will lead to a true encounter with Christ for all of us so that we see in each other brothers and sisters on the way to Christ. However, when people make choices for lifestyles contrary to the gospel, the Church must be full of mercy, slow to judge; rather she proclaims "in season, out of season," the love and compassion of the Good Shepherd who tenderly seeks out the stray sheep and says to one and all: "Come to me all who are weary and burdened" [Matt. 11:28].

Therefore, in imitation of the Good Shepherd, the Church must care for all human beings and love them. All are God's creatures "made in the image of God." To that end, the Church teaches regarding homosexual, bisexual and transsexual orientations: "They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided. These persons are called to fulfil God's will in their lives and, if they are Christians, to unite to the sacrifice of the Lord's Cross the difficulties they may encounter from their condition" [CCC, #2358].

The mission of the Church is clearly defined: "Go into the whole world and proclaim the Good News, baptising them in the name of the Father, and of the Son, and of the Holy Spirit, teaching them to observe all that I have commanded you" [Matt. 28:19-20a]. That's the Church's mandate to proclaim the Good News of salvation!

Therefore, we appeal to our Catholic faithful to stand firm in the faith handed on to us by the One, Holy, Catholic and Apostolic Church impelled by and committed to the teaching and mission of Jesus. We also strongly urge that all will respect those brothers and sisters of ours who admit to having an orientation different from the majority of our people. We must respect them, do no violence to them, and respect their basic human rights, for they, along with us, are made in the image and likeness of God.

Respect for others, however, does not imply approval of the life styles contrary to the traditional ones, even if and when the State were to decriminalise the anti-buggery law, always bearing in mind that legality does not make a thing moral. Our duty, under all circumstances, is to express love and concern as we remain firm in the faith of our Fathers fostered and maintained by God's Holy Spirit.

"Now may the God of peace who brought again from the dead our Lord Jesus, the great shepherd of the sheep, by the blood of the eternal covenant, equip you with every good that you may do his will, working in you that which is pleasing in his sight, through Jesus Christ, to whom be glory forever and ever. Amen" [Heb. 13: 20 – 21].

Yours faithfully in Christ,
Bishops of the Antilles Episcopal Conference
April 25, 2015

1 *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons,* Guidelines from the Congregation for the Doctrine of the Faith 2003, Section 11.

2 *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons,* Guidelines from the Congregation for the Doctrine of the Faith 2003, Section 9.

AEC Statistics

Country	Diocese	Sq. ml.	Sq. km.	Population	Catholics	
Guyana	Georgetown	83,000	214,969	750,000	8.1%	60,750
Suriname	Paramaribo	63,250	163,820	492,829	22.8%	112,365
French Guiana	Cayenne	32,253	83,534	300,000	66%	198,000
Belize	Belize City and Belmopan	8,020	22,966	301,270	49.6%	149,430
Bahamas	Nassau	5,383	13,943	330,549	13.5%	44,624
Jamaica		4,244	10,991	2,528,000	3.8%	96,064
	Kingston					75,864
	Montego Bay	1,500	3,885	723,200	2%	13,200
	Mandeville	1,282		484,000	1.4%	7,000
T&T	Port of Spain	1,980	5,130	1,262,366	29.4%	371,136
Guadeloupe	Basse-terre	630	1,630	320,017	95%	304,016
Martinique	St. Pierre and Fort de France	436	1,128	360,000	87%	313,200
Dominica	Roseau	290	751	75,705	70.0%	52,994
St. Lucia	Castries	238	616	150,000	86.7%	130,050
Curaçao	Willemstad	171	444	141,766	85%	120,501
Aruba		69	179	101,484	80.8%	81,999
Bonaire		113	292	21,000		
Antigua	St. John's	108	281	87,000	10.0%	
Barbados	Bridgetown	170	430	247,288	4.41%	10,905
St. Vincent & G	Kingstown	150	389	110,000	10.0%	11,000
Grenada	St. Georges	133	344	91,158	53%	48,314
Bermuda	Hamilton	21	54	63,023	15%	9,453
Cayman				60,000	12.5%	7,500
			TOTAL	**9,000,655**		**2,114,801**

Intimate Conviction 2: Continuing the Decriminalization Dialogue was an online conference held in November 2020, over the course of three half days. This conference built on the teachings of the first Intimate Conviction gathering in 2017, with a particular emphasis on including voices and perspectives from the global south.

Once again, activists, church officials and politicians from around the world gathered to discuss the role of the Church in maintaining homophobic laws — and how the Church can help to break these down. The conversations that ensued were both enlightening and inspiring, highlighting the work that still needs to be done to ensure that the human rights of LGBTQ+ people around the world are respected, protected and fulfilled. We are pleased to present this volume of some of the presentations from this second conference and we hope that it will be another valuable resource for all those looking to understand why these laws came about and what can be done to change them.

HIV LEGAL NETWORK
RÉSEAU JURIDIQUE VIH

Court File No. C65397

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE CHRISTIAN MEDICAL AND DENTAL SOCIETY OF CANADA,
THE CANADIAN FEDERATION OF CATHOLIC PHYSICIANS' SOCIETIES,
CANADIAN PHYSICIANS FOR LIFE,
DR. MICHELLE KORVEMAKER, DR. BETTY-ANN STORY,
DR. ISABEL NUNES, DR. AGNES TANGUAY and
DR. DONATO GUGLIOTTA

Appellants

and

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

Respondent

and

ATTORNEY GENERAL OF ONTARIO, B'NAI BRITH OF CANADA LEAGUE FOR HUMAN RIGHTS, VAAD HARABONIM OF TORONTO, CENTRE FOR ISRAEL AND JEWISH AFFAIRS, CANADIAN CIVIL LIBERTIES ASSOCIATION, CANADIAN HIV/AIDS LEGAL NETWORK, HIV & AIDS LEGAL CLINIC OF ONTARIO, CANADIAN PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH, CATHOLIC CIVIL RIGHTS LEAGUE, FAITH AND FREEDOM ALLIANCE AND PROTECTION OF CONSCIENCE PROJECT, CHRISTIAN LEGAL FELLOWSHIP, THE EVANGELICAL FELLOWSHIP OF CANADA, THE ASSEMBLY OF CATHOLIC BISHOPS OF ONTARIO, DYING WITH DIGNITY, JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS, ONTARIO MEDICAL ASSOCIATION and WOMEN'S LEGAL EDUCATION AND ACTION FUND INC.

Intervenors

FACTUM OF THE INTERVENORS, CANADIAN HIV/AIDS LEGAL NETWORK, HIV & AIDS LEGAL CLINIC ONTARIO and CANADIAN PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH

November 12, 2018

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PART I. OVERVIEW

1. The appellant physicians asked the Divisional Court to countenance their refusal to provide their patients with meaningful access to lawful, clinically indicated, and in some cases medically necessary, healthcare on the basis of the appellant physicians' personal beliefs. The Divisional Court properly denied their request. Barriers to accessing medical care can result in the delay or even denial of effective care. This in turn can lead to patients' mental and physical suffering, even death.

2. Marginalized communities, and in particular, persons living with HIV, and transgender and gender-diverse people ("trans people"), already face discrimination in accessing effective medical care. The Canadian HIV/AIDS Legal Network, HIV & AIDS Legal Clinic Ontario, and the Canadian Professional Association for Transgender Health (collectively the "Intervenors"), are comprised of, and work closely with and on behalf of, members of the marginalized communities they represent – including people living with HIV (and related disabilities), women, LGBTI (lesbian, gay, bisexual, trans and intersex) people, people with substance dependency, and sex workers. The identities of these constituencies are inextricably intertwined with the delivery of healthcare in this province.

3. The Intervenors submit that the two policies challenged by the appellant physicians (the "Policies") are minimally acceptable. It is regrettable that the Policies still allow physicians to put their own personal beliefs before their patients' right to timely and effective healthcare by refusing to provide care directly. The Policies' requirement that physicians provide an effective referral in lieu of care is the bare minimum that should be required of physicians who wish to give their own personal beliefs precedence over the provision of care to their patients, contrary to

a patient-centered approach that respects and facilitates patient autonomy in medical decision-making.

4. The proposals put forward by the appellants as alternatives to effective referral fall well below the minimally acceptable standard. Authorizing physicians to provide anything short of an effective referral would enable and endorse the very same discrimination that the marginalized individuals represented by the Intervenors already encounter far too often when accessing healthcare. The Policies, which delay vulnerable patients' access to healthcare, already harm those patients, and the Court ought to go no further in sanctioning such a risk by granting the relief sought by the appellants.

5. The Intervenors support the position of the respondent, the College of Physicians and Surgeons of Ontario ("CPSO"), that the appeal should be dismissed. The scope of the appellant physicians' rights under s. 2(a) of the *Charter*, and whether the proposed expression of their rights attracts *Charter* protection at all, must be considered in light of the fact that the expression creates a real risk of injury to the physical and mental integrity of already vulnerable and marginalized patients, and it does so in the context of a physician's delivery of public healthcare. In the alternative, the Policies are at most minimally impairing of the appellant physicians' rights. To require anything less than an effective referral would be a complete denial of their patients' own rights to make informed decisions about their own medical care; the deleterious effects of this would far outweigh any allegedly salutary effects for the appellant physicians.

PART II. FACTS

6. The Intervenors adopt the summary of facts set out in Part II of the CPSO's factum. They submit that the following additional facts are also relevant to this Court's determination.

7. Access to medical care plays a particularly critical role in the health and wellbeing of trans people and people living with HIV. People living with HIV and trans people continue to face pervasive stigma and accompanying discrimination, including barriers when accessing healthcare, which is of particular relevance to this appeal.

8. The record before the Court includes examples of the existing barriers which trans patients have in identifying medical providers who are able to provide culturally appropriate and competent care. The experience of trans patients in the healthcare system confirms that:

(a) it takes many trans patients several attempts to find a physician who will prescribe hormones;

(b) trans patients have been denied care and sent away without a referral;

(c) many trans patients have lost trust in the healthcare system and avoid physicians; and,

(d) gender transition with the assistance of appropriate medical care is associated with, and in fact likely causally connected to, reduced suicide risk for trans individuals.

Affidavit of Dr. Greta Bauer, Respondent's Compendium, Tab 15, pp. 136-138, paras. 11-16.

9. The appellants' own evidence confirms the barriers faced by members of the groups represented by the Intervenors when accessing medical care. Dr. Michelle Korvemaker, a physician whose practice includes emergency and rural family medicine, testified that when one of her own patients sought her assistance with transgender care, she told the patient: "I believe that God has created us male and female, and that choosing to change your gender is working

against how God has made you." Other evidence in the record demonstrates that some physicians may similarly take a reductive, unresponsive and ineffective approach when treating trans patients.

> Transcript of Cross-Examination of Dr. Michelle Korvemaker, Exhibit Book Volume 6, Tab 89, p. 9966, Q. 111.
>
> Transcript of Cross-Examination of Dr. Agnes Tanguay, Exhibit Book Volume 6, Tab 91, p. 10163, Q. 329.
>
> Transcript of Cross-Examination of Dr. Betty-Ann Story, Exhibit Book Volume 5, Tab 88, pp. 9839-9840, Q. 103-104.

10. People living with HIV have also long experienced discrimination related to their medical condition. Some members of the medical community continue to exhibit a prejudicial attitude towards people living with HIV, including because of negative assumptions about how someone may have contracted HIV. These assumptions are rooted in moral, discriminatory judgments related in particular to sexuality, sexual activity and drug use.

PART III. ISSUE AND LEGAL ARGUMENT

11. The Intervenors adopt the statement of issues set out at Part III of the CPSO's factum. Below, they make submissions that the Divisional Court erred at the outset of its analysis in holding that s. 2(a) of the *Charter* was engaged on the basis that the interference with the appellant physicians' freedom of religion was more than trivial or insubstantial.

12. In the alternative, the Intervenors submit that the Policies are minimally impairing of any of the appellant physicians' purported *Charter*-protected rights, and the salutary effects of the Policies (e.g. patients' access to healthcare) far outweigh any alleged, minimal impact on physicians' rights.

> Divisional Court Reasons, paras. 113-114.

A. Charter rights are limited by the risk of harm to vulnerable patients

13. The Intervenors do not challenge the sincerity of the appellant physicians' religious beliefs. However, they submit that any interference with these religious beliefs in the context of this case is, at its highest, trivial, and therefore does not attract *Charter* protection. Requiring a physician to provide a patient with an effective referral to a non-objecting treating physician is not the same as requiring a physician to provide healthcare contrary to a physician's religious beliefs. The referring physician has engaged in the wholesale transfer of medical responsibility for a patient once that patient has been seen by the new physician, including assessment and treatment.

14. When considering the scope of the protections the *Charter* affords the appellant physicians' proposed expression of their s. 2(a) rights, it is necessary to consider both that the purported expression creates a risk of harm to their patients, and the highly regulated context of public healthcare. Unlike some other *Charter* rights, the protections of s. 2(a) are internally limited. The *Charter* does not go so far as to permit *any* expression of belief, no matter how harmful to others. The Supreme Court confirmed this as early as *Big M. Drug Mart*, where it held that:

> The values that underlie our political and philosophic traditions demand that every individual be free to hold and to manifest whatever beliefs and opinions his or her conscience dictates, provided *inter alia* only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own.
>
> *R. v. Big M. Drug Mart*, [1985] 1 SCR 295 at 346 (S.C.C.) [emphasis added].
>
> See also: *P. (D.) v. S. (C.)*, [1993] 4 S.C.R. 141 at 182 (S.C.C.).

15. An applicant may have no claims that their s. 2(a) rights have been infringed in cases where the protection of health or the fundamental rights and freedoms of others are at issue. As

Justice Rowe recently remarked in his concurring reasons in *Law Society of British Columbia v. Trinity Western University*: "the coercion of nonbelievers is not protected by the *Charter*."

> *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 at para. 239, per Rowe J., concurring ["*Trinity Western*"].

16. Section 2(a) does not and should not protect the rights of an individual physician who alleges their religious belief supersedes the rights of others to effective access to healthcare. Should the appellant physicians act on their stated desire to refuse to provide meaningful access to healthcare to patients based on their identities, it could result — and, indeed, the appellants' evidence set out above suggests that it has already resulted — in the discriminatory denial of health services required to protect patients and keep them free from harm.

17. As described above, marginalized communities already face pre-existing barriers in accessing healthcare. The communities that the Intervenors represent have historically suffered and continue to suffer from stigmatization, marginalization and discrimination in many areas of life, including the healthcare context, as a result of some groups' religious teachings. This Court need look no further than the appellants' own evidence in this proceeding, set out above, to see examples of discriminatory attitudes expressed by certain members of the medical community. Adopting a policy that allows or facilitates physicians to deny services, or failing to create a policy which at a minimum encourages and requires a measure aimed at ensuring alternative effective access to health services, would perpetuate these pre-existing disadvantages.

18. Should physicians in their professional capacity act on a personal belief as the basis to refuse to provide healthcare to trans persons or persons living with HIV, this will inevitably result in delay when accessing healthcare (which is a harm in and of itself) and could result in the discriminatory denial of health services altogether which are required to protect patients, and to

keep them free from harm. In a clinical setting, patients may suffer significant harm if a physician or other healthcare provider refuses to provide them with competent care when they attend to seek that care. The potential for harm is particularly acute for persons who are vulnerable and in a position of on-going reliance on medical care, including persons living with HIV and trans persons.

19. These risks can be somewhat mitigated by requiring physicians to provide an effective referral, and the CPSO has a pressing interest and obligation to ensure health services are delivered in a manner which promotes the public interest, including equitable access to care. The Policies respond to the vulnerability of some groups in accessing healthcare and provide guidance to physicians of the expected standards of care and professionalism. Any guidance provided by the CPSO ought to facilitate patients' health, as well as other values that are central to the practice of medicine: dignity, equality and autonomy. This Court ought not to grant *Charter* protection to a belief that, when expressed in the context of the delivery of medically indicated care, will create a real risk of injury to a patient because the physician chooses to withhold or refuse access to care.

> *College of Physicians and Surgeons of Ontario v. Yazdanfar*, 2013 ONSC 6420 at para. 114 (Div. Ct.) ["*Yazdanfar*"].

B. Charter *rights are limited by the professional and public interest context*

20. In considering the scope of the appellant physicians' s. 2(a) rights, it is also important to consider that they are purporting to express these rights in the highly regulated sphere of public health. The Divisional Court held that the Policies infringed those rights because at least some of the appellant physicians were not free to practice medicine in accordance with their religious beliefs or their conscience. However, there is no right to practice a profession "unfettered by the

applicable rules and standards which regulate that profession", as the individual appellants seek to do here. The Divisional Court, in another case, succinctly explained why a physician's rights while practicing are more limited than their rights as a private individual:

> The appellant is not confronted with this restriction as a person subject to a law of general application or as a defendant in a penal prosecution, but rather as a volunteer who has elected to accept the substantial privileges and significant responsibilities of being a member of a self-governing profession.
>
> *Yazdanfar, supra* para 18 at para. 113.
>
> *Mussani v. College of Physicians & Surgeons (Ontario),* 2004 CarswellOnt 5433 at paras. 41, 43 (Ont. C.A.)
>
> *Trinity Western, supra* para 14 at para. 37.

21. Similarly, the *Charter* does not protect an individual's right to engage in a particular profession, or a physician's right to determine the terms on which they deliver public healthcare. There is no requirement at law that individuals with particular beliefs become physicians and practice in environments where they may encounter patients who require care to which the physician objects. It is a *bona fide* occupational requirement of the medical profession that members deliver health services to the public in a manner that respects the dignity, autonomy and basic humanity of Ontario's diverse population.

> *Chaoulli c. Québec (Procureur Général),* 2005 SCC 35 at para. 202.

22. Physicians in Ontario have been granted extraordinary privileges, including self-regulation and a monopoly on delivering government-funded medical care. Physicians licensed by the CPSO are the gatekeepers to, and providers of, government-funded universal healthcare, a specific governmental policy or program. The CPSO is the statutory body through which the practice of medicine is regulated in Ontario. The CPSO has an overarching statutory duty to regulate the profession in the public interest. In the context of

delivering medical services, the public interest includes creating and fostering an environment in which the personal worth, dignity and autonomy of every patient is respected, preventing harm to patients, and facilitating access to appropriate care.

> Health Professions Procedural Code, s. 3(2), being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, C. 18.

23. As one part of its mandate, the CPSO creates policies which provide physicians with guidance on standards and issues they may encounter in their practices. The Supreme Court of Canada recently held, in the context of the regulation of the legal profession, that when a legislature has delegated aspects of professional regulation to the professional body itself, that delegation recognizes the body's "particular expertise and sensitivity to the conditions of practice." The Policies are two examples of how the CPSO provides physicians with guidance on the expected standards of professionalism and care, as articulated by their expert regulator. The Policies are sensitive to the particular, highly regulated and complex conditions of the practice of medicine in Ontario.

> *Trinity Western*, *supra* para 14 at para. 37.

24. In contrast, the appellants' proposals and positions are formulated exclusively from their own perspective, and do not take into account the systemic issues arising in the delivery of healthcare in Ontario, or the social realities faced by vulnerable persons attempting to access treatment. Instead of a regulatory approach based on the public interest, the appellant physicians seek to practice medicine only on the terms which they personally find acceptable, without regard to the public interest standards adopted by the CPSO in the Policies.

25. Regulated health professionals simply cannot expect the same scope of *Charter* rights when practicing that they may enjoy in their private lives, particularly when that conduct creates

a risk of harm to those who depend on them. There are competing social, regulatory, and normative considerations that impact the rights of members of the profession while practicing, which limit these rights.

C. Any infringement is minimally impairing and the salutary effects of the Policies outweigh any allegedly deleterious effects

26. In the alternative, the Intervenors submit that the Policies are minimally impairing of any purported rights the appellant physicians have in the circumstances of the present appeal. In contrast to the Policies' minimal impact on the appellant physicians, the Policies are intended to facilitate patients' health and their existing rights, and the values of dignity, equality and autonomy – values that are central to the practice of medicine and core values in Canadian law. Should any minimal infringement of the appellants' purported rights arise, it is clearly outweighed by the greater public interest in ensuring equitable, non-discriminatory access to health care. This public interest is particularly acute for members of historically stigmatized communities who continue to encounter such prejudice and discrimination in the health care setting.

PART IV. ORDER SOUGHT

27. The Intervenors estimate 10 minutes will be required for their oral argument.

28. The Intervenors request that the appeal be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of November, 2018.

Michael Fenrick/Denise Cooney/Ryan Peck/
Khalid Janmohamed/ Richard Elliott

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SCHEDULE A – TABLE OF AUTHORITIES

1. *R. v. Big M. Drug Mart*, [1985] 1 SCR 295 (S.C.C.)

2. *P. (D.) v. S. (C.)*, [1993] 4 S.C.R. 141 (S.C.C.).

3. *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32.

4. *College of Physicians and Surgeons of Ontario v. Yazdanfar*, 2013 ONSC 6420 (Div. Ct.).

5. *Mussani v. College of Physicians & Surgeons (Ontario)*, 2004 CarswellOnt 5433 (Ont. C.A.)

6. *Chaoulli c. Québec (Procureur Général)*, 2005 SCC 35

SCHEDULE B - TABLE OF STATUTORY AUTHORITIES

Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, C. 18.

Objects of College
3 (1) The College has the following objects:

1. To regulate the practice of the profession and to govern the members in accordance with the health profession Act, this Code and the Regulated Health Professions Act, 1991 and the regulations and by-laws.

2. To develop, establish and maintain standards of qualification for persons to be issued certificates of registration.

3. To develop, establish and maintain programs and standards of practice to assure the quality of the practice of the profession.

4. To develop, establish and maintain standards of knowledge and skill and programs to promote continuing evaluation, competence and improvement among the members.

4.1 To develop, in collaboration and consultation with other Colleges, standards of knowledge, skill and judgment relating to the performance of controlled acts common among health professions to enhance interprofessional collaboration, while respecting the unique character of individual health professions and their members.

5. To develop, establish and maintain standards of professional ethics for the members.

6. To develop, establish and maintain programs to assist individuals to exercise their rights under this Code and the Regulated Health Professions Act, 1991.

7. To administer the health profession Act, this Code and the Regulated Health Professions Act, 1991 as it relates to the profession and to perform the other duties and exercise the other powers that are imposed or conferred on the College.

8. To promote and enhance relations between the College and its members, other health profession colleges, key stakeholders, and the public.

9. To promote inter-professional collaboration with other health profession colleges.

10. To develop, establish, and maintain standards and programs to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues.

11. Any other objects relating to human health care that the Council considers desirable.

Duty
3 (2) In carrying out its objects, the College has a duty to serve and protect the public interest.

THE CHRISTIAN MEDICAL AND DENTAL SOCIETY OF CANADA et al.
Appellants

-and-

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

Respondent

Court File No. C65397

COURT OF APPEAL FOR ONTARIO

FACTUM OF THE INTERVENORS, CANADIAN HIV/AIDS LEGAL NETWORK, HIV & AIDS LEGAL CLINIC ONTARIO and CANADIAN PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH

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Canadian Professional Association for Transgender Health

COURT OF APPEAL FOR ONTARIO

CITATION: Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario, 2019 ONCA 393
DATE: 20190515
DOCKET: C65397

Strathy C.J.O., Pepall and Fairburn JJ.A.

BETWEEN

The Christian Medical and Dental Society of Canada, The Canadian Federation of Catholic Physicians' Societies, Canadian Physicians for Life, Dr. Michelle Korvemaker, Dr. Betty-Ann Story, Dr. Isabel Nunes, Dr. Agnes Tanguay and Dr. Donato Gugliotta

Applicants
(Appellants)

and

College of Physicians and Surgeons of Ontario

Respondent
(Respondent)

and

Attorney General of Ontario, Dying with Dignity Canada, Canadian Civil Liberties Association, The Evangelical Fellowship of Canada and The Assembly of Catholic Bishops of Ontario and the Christian Legal Fellowship, B'nai Brith of Canada League for Human Rights, Justice Centre for Constitutional Freedoms, Catholic Civil Rights League, Faith and Freedom Alliance and Protection of Conscience Project, Canadian HIV/AIDS Legal Network, HIV & AIDS Legal Clinic Ontario and Canadian Professional Association for Transgender Health

Interveners

Eugene Meehan, Q.C., for the appellants the Christian Medical and Dental Society of Canada, the Canadian Federation of Catholic Physicians' Societies, Dr. Michelle

Korvemaker, Dr. Betty-Ann Story, Dr. Isabel Nunes, Dr. Agnes Tanguay and Dr. Donato Gugliotta

Albertos Polizogopoulos, for the appellant Canadian Physicians for Life

Lisa Brownstone and Ruth Ainsworth, for the respondent

Shaun O'Brien and Karen Segal, for the intervener Women's Legal Education and Action Fund Inc.

Rahool Agarwal and Kate Findlay, for the intervener Canadian Civil Liberties Association

Kelly Doctor and Mary-Elizabeth Dill, for the intervener Dying with Dignity Canada

Emrys Davis and Grace McKeown, for the interveners Catholic Civil Rights League, Faith and Freedom Alliance and Protection of Conscience Project

Timothy D. Chapman-Smith and Shanique M. Lake, for the intervener Ontario Medical Association

Michael Fenrick and Khalid Janmohamed, for the interveners Canadian HIV/AIDS Legal Network, HIV & AIDS Legal Clinic Ontario and Canadian Professional Association for Transgender Health

Alan Honner, for the intervener Justice Centre for Constitutional Freedoms

Deina Warren, Derek B.M. Ross and Sarah E. Mix-Ross, for the interveners The Evangelical Fellowship of Canada, The Assembly of Catholic Bishops of Ontario and the Christian Legal Fellowship

Gregory M. Sidlofsky, for the intervener B'nai Brith of Canada League for Human Rights, the Vaad Harabonim of Toronto and the Centre for Israel and Jewish Affairs

Heard: January 21 and 22, 2019

On appeal from the order of the Divisional Court (Justices Herman J. Wilton-Siegel, Richard A. Lococo and Wendy M. Matheson), dated January 31, 2018, with reasons reported at 2018 ONSC 579, 140 O.R. (3d) 742.

Strathy C.J.O.:

A. OVERVIEW

[1] This appeal requires the court to reconcile a conflict between patients' access to medical services such as medical assistance in dying ("MAiD"), abortion and reproductive health services and physicians' freedom to refuse to participate in services to which they have religious objections.

[2] The appellants challenge the constitutionality of two policies (the "Policies") enacted by the College of Physicians and Surgeons of Ontario (the "College"). The Policies each require physicians who object to providing certain medical procedures or pharmaceuticals on the basis of religion or conscience to provide the patient with an "effective referral". An effective referral is defined as "a referral made in good faith, to a non-objecting, available, and accessible physician, other health-care professional, or agency."[1] The Policies do not require physicians to personally provide the services to which they object, except in an emergency where it is necessary to prevent imminent harm to a patient.

[3] The constitutionality of the Policies' effective referral requirements is the focus of this appeal.

[4] The appellants are individual physicians and organizations representing physicians in Ontario. They brought two separate applications in the Divisional

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[1] Policy Statement #4-16, entitled "Medical Assistance in Dying", refers to "nurse practitioner" in place of "other health-care professional".

Court, challenging the Policies on the ground that the effective referral requirements infringe their freedom of conscience and religion under s. 2(a) of the *Canadian Charter of Rights and Freedoms* because the requirements oblige them to be complicit in procedures that offend their religious beliefs. The appellants also claimed that the effective referral requirements discriminate against physicians based on their religions, thus infringing their s. 15(1) equality rights.

[5] The Divisional Court dismissed the appellants' applications. It found that while the Policies infringe their freedom of religion, the infringement is justified under s. 1 of the *Charter*, because the Policies are reasonable limits, demonstrably justified in a free and democratic society. The Divisional Court did not consider whether freedom of conscience is engaged. It dismissed the s. 15(1) claim in its entirety.

[6] The appellants and the College each take issue with the Divisional Court's findings regarding the cost or burden imposed by the Policies on objecting physicians, and the corresponding balancing in the *R. v. Oakes*, [1986] 1 S.C.R. 103 analysis of that cost or burden against the salutary effects of the Policies. They each sought to adduce fresh evidence on this issue. The College denies there is a breach of s. 2(a), but says that if there is, it is justified under s. 1.

[7] The appeal focuses on the s. 1 analysis and turns primarily on the minimal impairment and proportionality branches of the analytical framework outlined in

Oakes. This requires an appropriate characterization of the nature of the cost or burden imposed by the Policies on objecting physicians, and the balancing of that burden against the benefits of the objective of the effective referral requirements. The appellants' principal submission on appeal is that the effective referral requirements are not minimally impairing of their rights and that alternative measures would achieve the same objective, while respecting their freedom of religion. They contend that a "generalized information" model, in which objecting physicians give patients information concerning publicly-available resources and services, would provide a practical, workable and less impairing alternative to effective referral. The College denies there is a breach of s. 2(a), but says that if there is, the Policies are justified under s. 1.

[8] For the reasons that follow, I substantially agree with the thorough and cogent analysis of the Divisional Court and would dismiss the appeal.

B. BACKGROUND

(1) The Parties and Interveners

[9] The five individual appellants are family physicians, practicing in various parts of Ontario. As I will explain, their religion is central to their lives. It informs everything they do, including their practice of medicine. They care deeply for their patients and strive to honour their legal and ethical duties to their patients. They also believe in the sanctity of human life. Their evidence, supported by the

evidence of other physicians and theologians, is that the effective referral requirements of the Policies contravene their conscientious and religious beliefs, which prevent them from performing some or all of the medical procedures at issue. The scope of their beliefs extends beyond performing such procedures, and includes "being complicit in or an accessory to" those procedures. They believe that complying with the effective referral requirements of the Policies would make them complicit in performing those procedures.

[10] The three appellant organizations represent physicians who object to some or all of abortion, MAiD and other medical procedures and pharmaceuticals on grounds of religion and conscience. These organizations are:

- The Christian Medical and Dental Society of Canada (the "CMDSC"), a national association of Christian physicians and dentists with approximately 500 members in Ontario. The five individual appellants are members of the CMDSC;
- The Canadian Federation of Catholic Physicians' Societies, a national association of Catholic Physicians' guilds, associations, and societies in eleven Canadian cities, including four in Ontario; and
- Canadian Physicians for Life, a non-religious national association of pro-life physicians, retired physicians, medical residents and students, with approximately 1,000 members in Ontario.

[11] The College is the self-governing body for the medical profession in Ontario under the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 ("*RHPA*") and the *Medicine Act, 1991*, S.O. 1991, c. 30.

[12] Nine organizations or groups of organizations, some of which intervened in the Divisional Court, were granted leave to intervene in this appeal. Five intervening organizations and groups supported the position of the appellants: (1) the Catholic Civil Rights League, Faith and Freedom Alliance, and Protection of Conscience Project (the "CCRL et al."); (2) The Evangelical Fellowship of Canada, The Assembly of Catholic Bishops of Ontario, and Christian Legal Fellowship (the "EFC et al."); (3) the Ontario Medical Association (the "OMA") (which did not intervene in the applications below); (4) B'nai Brith of Canada League for Human Rights, the Vaad Harabonim of Toronto, and the Centre for Israel and Jewish Affairs ("B'nai Brith et al."); and (5) the Justice Centre for Constitutional Freedoms (the "JCCF").

[13] Four intervening organizations and groups supported the position of the College: (1) the Canadian Civil Liberties Association (the "CCLA"); (2) Women's Legal Education and Action Fund Inc. ("LEAF") (which did not intervene in the applications below); (3) Dying with Dignity Canada; and (4) the Canadian HIV/AIDS Legal Network, HIV & AIDS Legal Clinic Ontario, and the Canadian Professional Association for Transgender Health (the "Canadian HIV/AIDS Legal Network et al.").

(2) The Policies

[14] The Policies, extracts of which are set out below, require a physician to give an effective referral to another health care provider for medical procedures or pharmaceuticals which the physician objects to providing on the basis of religion or conscience. While each of the individual appellants objects to MAiD and abortion, their objections are not uniform with regard to other procedures and pharmaceuticals, such as contraception, emergency contraception, fertility treatments, and medical treatments for transgender patients.

[15] None of the parties dispute that the *Charter* applies to the Policies. The College says the *Charter* applies, not because it is a state actor and not because the Policies are laws, but rather because it is implementing a specific government objective through the Policies: *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, at paras. 44, 50-51.

[16] The Policies are not "regulations", nor are they a "code, standard or guideline relating to standards of practice of the profession" adopted pursuant to s. 95(1.1) of the Health Professions Procedural Code, Schedule 2 of the *RHPA*. Accordingly, non-compliance with the Policies is not an act of professional misconduct under the College's professional misconduct regulation: *Professional Misconduct*, O. Reg. 856/93.

[17] However, the Policies establish expectations of physicians' behaviour and are "intended to have normative force". As such, they may be used as evidence of professional standards in support of an allegation of professional misconduct.

[18] The College introduced the Policies in 2015 and 2016. The first was Policy Statement #2-15, entitled "Professional Obligations and Human Rights" (the "Human Rights Policy"), which contains the following effective referral requirement:

> Where physicians are unwilling to provide certain elements of care for reasons of conscience or religion, an effective referral to another health-care provider must be provided to the patient. An effective referral means a referral made in good faith, to a non-objecting, available, and accessible physician, other health-care professional, or agency. The referral must be made in a timely manner to allow patients to access care. Patients must not be exposed to adverse clinical outcomes due to a delayed referral. Physicians must not impede access to care for existing patients, or those seeking to become patients. [Emphasis added.][2]

[19] The Human Rights Policy was the evolution of Policy Statement #5-08, entitled "Physicians and the Ontario *Human Rights Code*", adopted by the College in 2008 to address its expectations for physicians who, for moral or religious

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[2] The Human Rights Policy also contains the following provision: "Physicians must provide care in an emergency, where it is necessary to prevent imminent harm, even where that care conflicts with their conscience or religious beliefs." This provision was challenged in the Divisional Court. However, the Divisional Court noted that all the individual appellants agreed that they would not object to performing an abortion where it was necessary to save a pregnant woman's life and the appellant organizations agreed most of their members would take the same position: para. 218. Thus, the Divisional Court found that there was no evidence that the emergency provision would raise a concern even if the provision were interpreted to require the provision of treatment to prevent a serious deterioration of health short of saving a patient's life: para. 218. It dismissed the applications in relation to the emergency provision. The appellants do not pursue the issue in this court.

reasons, refused to accept certain patients, refused to provide medical services, or terminated the physician-patient relationship. While that document did not contain the current effective referral requirement, it did provide that objecting physicians were expected to "[a]dvise patients or individuals who wish to become patients that they can see another physician with whom they can discuss their situation and in some circumstances, help the patient or individual make arrangements to do so."

[20] In 2014, the College undertook a review of the policy and engaged in a consultation process with its membership and other interested parties, revising the policy in March 2015 to include the effective referral requirement.

[21] The stated purpose of the Human Rights Policy is to set "out the legal obligations under the [*Human Rights*] *Code* for physicians to provide health services without discrimination, as well as the College's professional and ethical expectations of physicians in meeting those obligations.... [The] policy outlines physicians' rights to limit the health services they provide for legitimate reasons while upholding their fiduciary duty to their patients."

[22] After the release of the decision of the Supreme Court of Canada in *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331, striking down portions of the *Criminal Code*, R.S.C. 1985, c. C-46, prohibiting assisted suicide, the College undertook a consultation process, which led to the adoption of a policy

to provide guidance to physicians in complying with the legislation permitting MAiD. The stated purpose of the policy, adopted in June 2016, is to articulate "the legal obligations and professional expectations for physicians with respect to medical assistance in dying, as set out in federal legislation, provincial legislation, and relevant College policies."

[23] This was Policy Statement #4-16, entitled "Medical Assistance in Dying" (the "MAiD Policy"), which contained the following effective referral requirement:

> Where a physician declines to provide medical assistance in dying for reasons of conscience or religion, the physician must not abandon the patient. An effective referral must be provided. An effective referral means a referral made in good faith, to a non-objecting, available, and accessible physician, nurse practitioner or agency. The referral must be made in a timely manner to allow the patient to access medical assistance in dying. Patients must not be exposed to adverse clinical outcomes due to delayed referrals. [Emphasis added.]

[24] A "Fact Sheet" released by the College in 2016 gave guidance to physicians on compliance with the effective referral requirements. It states that a physician makes an effective referral "when he or she takes positive action to ensure the patient is connected in a timely manner to another physician, health care provider, or agency who is non-objecting, accessible and available to the patient."

[25] The Fact Sheet provides a non-exhaustive list of examples of how physicians can comply with the effective referral requirements. It notes that the physician can make the referral or assign the task to another, a designate, to make

the referral to a non-objecting physician, other non-objecting health care professional or an agency charged with facilitating referrals for the health care service. It also provides suggestions for physicians practicing in a hospital, clinic, or family practice group. The Divisional Court observed, at para. 33, that these "include identification of a point person within the institution or practice group who will facilitate referrals, or provide the health care to the patient, and implementation of a triage system for matching patients directly with non-objecting physicians in the institution or practice group."

[26] Contrary to the submissions on behalf of the OMA, an effective referral is not the same as a formal referral as generally understood within the medical profession. The Divisional Court made this point in describing the scope of the effective referral requirements, at para. 31:

> First, the Policies do not require that a referring physician provide a formal letter of referral to, and arrange an appointment for a patient with, another physician. The CPSO says that the intent of the Policies is to ensure only that patients are not left to finding a willing physician on their own without any assistance from the physician from whom they first sought care. Accordingly, the spirit of the requirements is that the physician take "positive action" to connect a patient with a physician, another health-care professional or an agency. Second, referral may be made to any of a physician, another health-care professional or an agency provided the party to whom a patient is referred provides the requested medical services and is "non-objecting, available and accessible". In the case of an agency, a referral may be made to an agency that is charged with facilitating referrals for the health care service. [Emphasis added.]

[27] It is noteworthy that in the case of both Policies, the referral can be made to someone other than a physician, including another non-objecting health care professional (such as a nurse practitioner) or an agency charged with facilitating referrals for patients. It is also noteworthy that the referral can be made by a staff member who is not a physician. As I have noted, the individual appellants and other objecting physicians regard providing an effective referral as complicity in the procedure itself and, therefore, sinful. However, not all of the individual appellants object to having a staff member provide the referral.

(3) The Fresh Evidence

[28] The appellants and the College each brought an application to submit fresh evidence on the appeal and each consented to the admissibility of the fresh evidence of the other. I would exercise the court's discretion to admit all the fresh evidence on appeal.

[29] Some of the appellants' fresh evidence is directed to what they contend was an erroneous assumption of the Divisional Court that objecting physicians could avoid conflicts between their religious beliefs and their obligations under the Policies by changing their practices to other specialties or sub-specialties, with little or no burden. They contend that the evidence suggests that the process of changing one's practice is, in fact, time-consuming, costly and risky. They argue that the Divisional Court's mistaken assumption resulted in a flawed s. 1 analysis.

[30] The appellants' fresh evidence is also directed to showing that patients can access MAiD through Ontario's Care Coordination Service (the "CCS") and that the publicly-accessible "Telehealth" service in Ontario can provide access to information and referral for MAiD and for other services such as abortion, contraception and other reproductive health services.

[31] In May 2017, Ontario established the CCS to assist patients and clinicians in accessing information and support for MAiD and other end-of-life options, including palliative care and hospice care. At the time the applications were heard by the Divisional Court, the CCS had just been announced. At that time, it was only accessible by physicians. That model has since been replaced by a direct access system that does not require a physician to make a referral.

[32] Through the CCS, patients and their caregivers can be connected with a physician or nurse practitioner who can conduct an assessment of whether a patient's condition meets the eligibility requirements for MAiD and, if appropriate, can provide MAiD and related services. Physicians or nurse practitioners who are unwilling or unable to provide MAiD can also contact the CCS to refer their patients to medical personnel who can provide such services.

[33] Telehealth provides a free, confidential, telephone-accessed service, in both French and English, and with translation support for some other languages, for health advice and information on a 24 hours per day, 7 days per week basis. A

registered nurse will discuss the caller's health issues in order to assess the caller's health concerns and give advice. The nurse will not diagnose the condition or prescribe medication. The nurse will direct the caller to the most appropriate level of care and may put the caller in contact with a health care professional who can advise the caller concerning treatment.

[34] The College's fresh evidence is directed toward two issues. First, to establish that physicians may be able to change their "scope of practice", to practice in areas that do not raise moral and ethical issues, without the need for re-certification. Second, to establish through first-hand patient accounts, the hardship and risks encountered by patients whose physicians refuse to provide an effective referral and the inadequacy and inaccessibility of internet or telephone resources to meet the needs of certain patients.

[35] I shall refer to the fresh evidence in more detail when I turn to the s. 1 analysis.

C. THE DIVISIONAL COURT'S REASONS

[36] To put the issues in context, I will summarize the reasons of the Divisional Court. I will refer to those reasons in more detail, where necessary, in the Analysis section, below.

[37] The Divisional Court considered several preliminary issues before addressing the constitutionality of the Policies. First, it rejected the appellants'

submission that the Policies are *ultra vires* the College. This issue is not being pursued in this court. Second, it found that the framework articulated in *Oakes* applied to the s. 1 analysis, rejecting the College's submission that the framework articulated in *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395, and *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, [2015] 1 S.C.R. 613, applied. The core issue was the constitutionality of the provisions in policies of general application, rather than the decisions to put those policies in place. Third, the Divisional Court found that correctness was the applicable standard for the review of the constitutionality of the Policies.

[38] Turning to the constitutional issues, the Divisional Court found that the effective referral requirements of the Policies infringe the individual appellants' s. 2(a) religious freedom. It rejected the College's argument that there is no infringement because the burden of compliance with the Policies is "trivial or insubstantial". The Divisional Court found that while the suggestions listed in the Fact Sheet address the concerns of many religious physicians, they do not address the concerns of all the individual appellants. Therefore, the Divisional Court held that the Policies infringe physicians' freedom of religion because the effect of the Policies is that at least some individual appellants are not free to practice medicine in accordance with their religious beliefs.

[39] Having found an infringement of s. 2(a) on the basis of freedom of religion, the court found it unnecessary to consider the appellants' alternative submission based on freedom of conscience.

[40] The appellants also argued that the Policies infringe their s. 15(1) equality rights because they impose a burden on religious physicians that is not imposed on other physicians. Applying the two-part test set out in *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30, [2015] 2 S.C.R. 548, the Divisional Court held that even if the effective referral requirements created a distinction between religious physicians and all other physicians, the appellants had failed to demonstrate that the Policies imposed a burden or denied a benefit "in a manner that has the effect of reinforcing, perpetuating or exacerbating their disadvantage."

[41] Having found an infringement of s. 2(a), the Divisional Court considered whether the infringement is justified under s. 1. It found that the effective referral requirements of the Policies constitute limits "prescribed by law", in accordance with the standard set out in *Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component*, 2009 SCC 31, [2009] 2 S.C.R. 295, at paras. 64-65, for binding policies of general application enacted by regulatory entities.

[42] Turning to the first branch of the *Oakes* analysis, the Divisional Court found that the objective of the effective referral requirements of the Policies – which it

defined as facilitating equitable access for patients to health care services – is sufficiently pressing and substantial to warrant overriding the individual appellants' religious freedom. Applying *Harper v. Canada (Attorney General)*, 2004 SCC 33, [2004] 1 S.C.R. 827, the Divisional Court found that, while there was no direct evidence that access to health care is a problem caused by physicians' religious objections to providing care, the Policies address a "reasoned apprehension of harm", namely deprivation of equitable access to health care, particularly for vulnerable populations, in the absence of effective referral. The Divisional Court found that the evidence in the record established this risk of deprivation.

[43] The Divisional Court found that the effective referral requirements are rationally connected to the goal of equitable access to health care services. It accepted the College's evidence about the important role played by family physicians as "gatekeepers" in the public health care system, particularly in regions where patients do not have meaningful choices about their primary health care provider. It found, at para. 159, that:

> [P]atients may lack the resources, financial or otherwise, or may not be healthy enough to access the services they seek without the benefit of a physician referral. In many cases, a patient requires his or her physician to act as the patient's "navigator" through the health care system and advocate on their behalf once the patient has expressed his or her healthcare needs and decided upon his or her desired treatment.

[44] The Divisional Court found that some patients, particularly more vulnerable patients, would be deprived of equitable access to health care in the absence of the Policies' effective referral requirements. Thus, there is a rational connection between the objective of the requirements and the means of achieving the objective, because it is reasonable to conclude that the effective referral requirements will facilitate patient access to care, based on physicians' "gatekeeper" function.

[45] With respect to the minimal impairment branch of the *Oakes* analysis, the Divisional Court considered the affidavit evidence of a manager in the College's policy department, which outlined the College's consideration of several alternative models and the reasons why those models had been rejected. The court found that the alternative means proposed by the appellants did not meet the objectives of the College in a real and substantial manner. Each proposal relied on a "self-referral" model, which had been rejected by the College, and the alternatives were not directed towards the objective of the requirements. The Divisional Court found that "none of these alternative models represents a less drastic means of achieving the objective of the Policies in a real and substantial manner and, therefore, that the rights of the Individual Applicants are impaired no more than necessary."

[46] The court also rejected the appellants' argument that the Policies are not minimally impairing because other jurisdictions in Canada do not require objecting physicians to make an effective referral. While other provincial health care

regulators may have developed policies less impairing of freedom of religion, the test is whether the provision falls within a range of reasonable alternatives. The legislator is entitled to some leeway. Nevertheless, the Divisional Court found that regulations in a number of other Canadian jurisdictions impose referral requirements similar to those adopted by the College. It found that the effective referral requirements satisfy the *Oakes* minimal impairment test because they fall within a range of reasonable alternatives to address the conscientious and religious objections of physicians.

[47] In the final branch of the *Oakes* analysis, the Divisional Court concluded that the impact of the effective referral requirements on objecting physicians is proportionate.

[48] The Divisional Court noted three contextual considerations relevant to the balancing. First, s. 7 of the *Charter* "confers a right to equitable access to such medical services as are legally available in Ontario and provided under the provincial healthcare system." Second, physicians have no right to practice medicine, let alone a constitutionally-protected right. Third, physicians in Ontario practice in a single-payer, publicly-funded health care system, which is structured around patient-centered care. Physicians have a duty not to abandon patients. In the event of a conflict, the interests of patients come first.

[49] The Divisional Court found that the salutary effects of the Policies ensured equitable access to health care by: preventing a delay in access to medical services; preventing loss of eligibility or denial of care for desired services; and preventing the stigma or emotional distress associated with a physician's denial of the request for medical services.

[50] While compliance with the Policies could have deleterious effects for some physicians, they were not without alternatives. For those physicians whose religious objections could not be addressed by the options identified in the Fact Sheet, the physicians could change the nature of their practice to a specialty or sub-specialty that did not engage the same moral and ethical issues. Given the options available to comply with the Policies, the potential for a conflict between a physician's religious beliefs and the Policies, and any resulting psychological concern, results from a conscious choice of the physician to practice in circumstances in which such a conflict could arise. The deleterious effects of the Policies, while not trivial, are less serious than outright exclusion from the practice of medicine.

[51] In balancing the salutary and deleterious effects of the Policies, the Divisional Court concluded that "it is reasonable to expect on the evidence and logic that an 'effective referral' requirement will make a positive difference in ensuring access to healthcare, and in particular equitable access to healthcare, in circumstances in which a physician objects on religious or conscientious grounds

to the provision of medical services requested by a patient." Particularly for vulnerable individuals, the "self-referral" model proposed by the appellants, would interfere with the ability of such individuals to access the health care services they seek.

[52] In balancing the public benefit against the costs in the context outlined above, the Divisional Court found that "to the extent there remains any conflict between patient rights and physician rights that cannot be reconciled within the Policies, the former must govern."

D. THE PARTIES' SUBMISSIONS

[53] The appellants' core submission is that the Policies impose an unnecessary and therefore unreasonable limit on their religious freedom. They submit that requiring a direct, individualized referral is unnecessary, because reasonable alternatives can achieve the same result, while respecting their freedom of religion. Providing readily-available, generalized health care information and a referral to the CCS, Telehealth or other informational resources strikes a reasonable balance between religious freedom and equitable patient access to health care.

[54] The appellants submit that the Divisional Court erred in its s. 1 analysis, because: (1) there is no rational connection between the Policies and the objective of promoting equitable access to health care; (2) mandatory, individualized referral does not satisfy the minimal impairment branch of the proportionality analysis and

does not fall within a range of reasonable alternatives; and (3) the Divisional Court's balancing of the salutary and deleterious effects of the Policies was flawed by its erroneous assumption that objecting physicians can insulate themselves from the conflict with their religious beliefs by changing their specialty or sub-specialty. The appellants also submit that the Divisional Court erred in its s. 15(1) analysis.

[55] The College contends that: (1) the Divisional Court should have applied the reasonableness standard of review and the framework articulated in *Doré/Loyola* rather than *Oakes*; (2) the Divisional Court erred in finding a s. 2(a) breach, because any interference with the appellants' freedom of religion is "trivial and insubstantial" in light of the availability of practice management alternatives set out in the Fact Sheet; and (3) alternatively, if there is a s. 2(a) breach, regardless of whether the *Doré/Loyola* or *Oakes* framework applies, any potential interference with freedom of religion is justified under s. 1. The College also says that the Divisional Court correctly found there was no s. 15(1) breach.

[56] I will discuss the submissions of the parties and the interveners further in the Analysis section, below.

E. ISSUES

[57] The appeal raises the following issues:

(1) What is the applicable standard of review and is the *Doré/Loyola* framework or the *Oakes* framework applicable to this case?

(2) Do the effective referral requirements of the Policies infringe the appellants' s. 2(a) freedom of conscience and religion?

(3) Do the effective referral requirements of the Policies infringe the appellants' s. 15(1) equality rights?

(4) If there is an infringement of the appellants' *Charter* rights and/or freedoms, is it justified under s. 1 of the *Charter*?

F. ANALYSIS

(1) Standard of Review and the Framework for Analysis

[58] The appellants agree with the Divisional Court's conclusion that the standard of review to be applied to the Policies was correctness and that *Oakes* provided the applicable framework for analysis. The College disagrees on both points, submitting that the constitutional review of a policy articulating standards of conduct for members of a profession should be conducted under a reasonableness standard and the *Doré/Loyola* framework.

[59] The normal rules of appellate review of lower court decisions, articulated in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, apply on this appeal. Questions of law are reviewed on a correctness standard, and questions of fact and mixed fact and law are reviewed on a standard of palpable and overriding error: *Housen*, at paras. 8, 10, 36-37. The Divisional Court's selection and

application of the correctness standard to the Policies is a question of law and is accordingly reviewed by this court on a correctness standard.

[60] Ordinarily, this court would be called upon to determine whether the Divisional Court chose the correct standard of review and applied it properly: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at paras. 45-47; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226, at para. 43; and *College of Physicians and Surgeons of Ontario v. Peirovy*, 2018 ONCA 420, 143 O.R. (3d) 596, at para. 52. However, the parties agree that the outcome of this appeal is unaffected by the choice of standard of review and framework for analysis, because the purpose of both frameworks is to determine whether the Policies unreasonably limit the appellants' *Charter* rights or freedoms: *Doré*, at para. 6. Accordingly, I would leave for another day the question of which standard of review and framework ought to be applied in these circumstances. For the purposes of these reasons, I simply apply the standard and framework chosen by the Divisional Court, which formed the basis of the parties' submissions on appeal. Nevertheless, like the Divisional Court, I would reach the same result applying a reasonableness standard and the *Doré/Loyola* framework.

(2) Section 2(a): Freedom of Conscience and Religion

[61] Section 2(a) of the *Charter* provides:

> Everyone has the following fundamental freedoms:
>
> (a) freedom of conscience and religion

Interference with freedom of religion

[62] In *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, [2018] 2 S.C.R. 293, at para. 62, the Supreme Court adopted the definition of religious freedom expressed in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p. 336:

> [T]he right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.

[63] At para. 63, the court set out the requirements of the test:

> [F]irst, that he or she sincerely believes in a practice or belief that has a nexus with religion; and second, that the impugned state conduct interferes, in a manner that is more than trivial or insubstantial, with his or her ability to act in accordance with that practice or belief.

This was the test applied by the Divisional Court, referring to *Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551, at para. 56. See also *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567, at para. 32.

[64] The sincerity of belief and interference are conceded. But the College contends that the interference is trivial and insubstantial and does not contravene s. 2(a).

[65] I disagree. To explain my reasons, it is necessary to examine the appellants' beliefs and their objections to performing or referring patients for the procedures at issue.

The role of religion in the appellants' lives and the impact of their religious beliefs

[66] While the individual appellants' objections are not uniform, they all have a sincere religious belief that human life is sacred, that abortion and MAiD are sinful, and that complicity in either practice, in the manner required by the Policies, is equally sinful.

[67] The individual appellants' religious faith is central to their identities and their religious beliefs are sincerely held. As one, Dr. Michelle Korvemaker, put it, "[m]y faith is the most important part of my life. It defines who I am, what I do and how I do it. I practice medicine first as a Christian."

[68] The individual appellants gave similar evidence concerning the nexus between their religious beliefs and their objections to providing medical services that are contrary to their beliefs in the sanctity of human life. For them, providing a patient with an effective referral to a physician who provides MAiD or an abortion would be the same as performing the medical procedures themselves. It would make them complicit and would be sinful.

[69] Some of the individual appellants deposed that their religious beliefs would preclude them from prescribing or providing some or all contraceptives, which they

regard as morally wrong, and that referring patients for such methods of family planning would also be morally wrong.

[70] The appellants' objections that compliance with the Policies would make them complicit in moral wrong is supported by the evidence of expert theologians and ethicists who deposed that the act of referral is a form of direct cooperation in the act which makes the physician complicit. As one, Dr. Daniel Sulmasy, put it, for a religious physician, "[r]eferral is not just a morally neutral get-together."

[71] As noted above, the appellants object to a range of medical procedures and pharmaceuticals. The evidence also demonstrates that individual physicians have different levels of tolerance for the steps required to connect a patient with an alternative provider of the services or pharmaceuticals. In their written submissions, the appellants stated that all of the members of the appellant organizations would be comfortable providing a patient with the phone number for Telehealth. This appears to be a retreat from the evidence in the Divisional Court, which suggested that at least some appellants would regard this as complicity. In oral argument, counsel for the appellants stated that they would also be comfortable with providing patients with the phone number for the CCS. This, too, appears to be a retreat from the evidence that some of the appellants would not be comfortable with providing the phone number for the CCS to patients. The appellants also submit that the wording of the Policies could be made "*Charter* compliant" through the addition of an option for an objecting physician to connect

the patient with "a resource" as an alternative to providing an effective referral as currently defined by the Policies.

Is the interference trivial or insubstantial?

[72] The College submits that there is no *Charter* infringement because the interference with the appellants' freedom of religion is no more than "trivial or insubstantial".

[73] As I have noted, the Divisional Court rejected this submission, finding that having regard to the significance of the appellants' religious beliefs, the burdens and costs of complying with the Policies, viewed objectively, could not be characterized as "trivial or insubstantial." After a lengthy analysis of this issue, and of the means of complying with the Policies, Wilton-Siegel J. concluded, at para. 114:

> Based on the foregoing, and given the significance of the religious beliefs in question to the Individual Applicants, I therefore find that the burden or cost to the Individual Applicants associated with compliance with the Policies cannot be characterized as "trivial or insubstantial". The effect of the Policies is that at least some of the Individual Applicants are not free to practice medicine in accordance with their religious beliefs or their conscience.

[74] The College submits that this was an error. It submits that in delineating the scope of the freedom, the Divisional Court conflated the two branches of the s. 2(a) test articulated in *Amselem and Multani v. Commission scolaire Marguerite-*

Bourgeoys, 2006 SCC 6, [2006] 1 S.C.R. 256, by failing to consider the context in which the freedom is being invoked by the appellants. It points to three contextual features that the Divisional Court allegedly failed to consider: (1) the Policies do not relate to the conduct of the appellants in their personal sphere, but rather as members of a highly-regulated profession operating in a multicultural and diverse society; (2) the Policies relate to access to health care services in a single-payer system where family physicians act as gatekeepers and navigators for patients, care is patient-centered and patient autonomy is respected; and (3) the right to practice medicine is a privilege, which imposes overriding duties and responsibilities on physicians to put the needs of their patients before their own. The College contends that while physicians are free to subscribe to their beliefs, the freedom to hold beliefs is broader than the freedom to act on them.

[75] The interveners, the Canadian HIV/AIDS Legal Network et al., support this submission, adding that in the context of a public health care system, the expression of the appellants' religious freedom creates a real risk of injury to the physical and mental integrity of already vulnerable and marginalized patients.

[76] In advancing this submission, both the College and some of the interveners point to comments of the Supreme Court that the scope of freedom of religion is internally limited. For example, in *Trinity Western University v. College of Teachers*, 2001 SCC 31, [2001] 1 S.C.R. 772, at para. 36, the court stated that "[t]he freedom to hold beliefs is broader than the freedom to act on them." See also

para. 62 of *Amselem*, where the court stated: "Conduct which would potentially cause harm to or interference with the rights of others would not automatically be protected".

[77] In my view, the Divisional Court correctly determined that the contextual features identified by the College are more appropriately considered under the s. 1 analysis, rather than in delineating the scope of the claimed religious freedom. While it is true that s. 2(a) is internally limited, that not all religious conduct is protected by the *Charter*, and that context is important in considering whether interference with religious freedom is "trivial or insubstantial", the specific contextual features identified by the College are more relevant to the proportionality analysis under s. 1. As noted above, the Divisional Court concluded that at least some of the individual appellants are not free to practice medicine in accordance with their religious beliefs as a result of the effective referral requirements. That interference is not rendered "trivial or insubstantial" simply because physicians practice in a "regulated profession that holds patient-centred care as a core value". However, that context is important when considering whether the effective referral requirements are minimally impairing, and when balancing the salutary and deleterious effects of the requirements. Accordingly, the contextual features identified by the College are considered under the s. 1 analysis, below.

[78] The College also submits that the cost or burden imposed by the Policies on objecting physicians is, at its highest, a minor practice management issue. It only requires administrative changes to the physician's practice, such as using a designate, or hiring support staff. The College suggests that even sole practitioners, a group identified by the Divisional Court as particularly affected by the Policies, "need only implement a system to triage specific patient requests, such as having a staff member connect patients with appropriate care providers or agencies, or partnering with another practitioner or clinic." Physicians operating in rural or remote regions, who cannot partner with a non-objecting physician, may discharge their responsibilities by connecting the patient to a social service agency. What the Policies require is a personal and good faith effort to ensure that the patient is connected to the service they are seeking. In the College's view, this burden constitutes a trivial or insubstantial interference.

[79] The findings of the Divisional Court on this issue are supported by the record, in which some of the appellants depose that their religious beliefs would preclude them from giving a referral to another physician for MAiD, abortion or certain reproductive procedures and that they would be compelled to abandon their practice area rather than face prosecution for failing to do so. In my view, the Divisional Court correctly concluded that the interference with the appellants' *freedom of religion* is neither trivial nor insubstantial.

Freedom of conscience

[80] Having found that the Policies infringe the individual appellants' freedom of religion, the Divisional Court declined to rule on the appellants' alternative argument that the effective referral requirements also infringe the appellants' freedom of conscience. The appellants briefly addressed this issue in oral submissions.

[81] The interveners, the OMA and the CCRL et al., assert that the Divisional Court ought to have addressed the freedom of conscience issue and urge this court to do so.

[82] It has been held that freedom of conscience and religion should be "broadly construed to extend to conscientiously-held beliefs, whether grounded in religion or in a secular morality": see *R. v. Morgentaler*, [1988] 1 S.C.R. 30, at p. 179. The scope of freedom of conscience may be broader than freedom of religion, extending to the protection of strongly-held moral and ethical beliefs that are not necessarily founded in religion: *Roach v. Canada (Minister of State for Multiculturalism and Culture)* (1994), 113 D.L.R. (4th) 67 (F.C.A.), at p. 82.

[83] The OMA submits that the Policies apply to physicians who object to the Policies for reasons of conscience and that the court should engage in a thorough analysis of this issue in order to give guidance to the medical profession.

[84] The CCRL et al. submit that the effective referral requirements violate physicians' "preservative freedom of conscience" – the freedom not to do what is perceived to be wrong. Forcing them to participate in perceived wrongdoing is an assault on their human dignity and deprives them of meaningful choice. They submit that this case affords an opportunity to give definition and scope to freedom of conscience, and to incorporate freedom of conscience principles into the *Oakes* analysis.

[85] The evidentiary record in this case is insufficient to support an analysis of freedom of conscience. To the extent the individual appellants raise issues of conscience, they are inextricably grounded in their religious beliefs. There is an insufficient basis on which to determine whether there are Ontario physicians who would regard the effective referral of patients as equivalent to participating in the medical services at issue and who would object to doing so on the basis of conscience. I find that, at its core, the appellants' claim is grounded in freedom of religion. This is reflected in the factual record and in the way the case was litigated in the Divisional Court. There is an insufficient basis to determine whether the options proposed by the College would meet the concerns of physicians with conscience-based objections and, if not, how the cost or burden on those physicians is to be weighed in the proportionality analysis. It is not appropriate to explore the contours of freedom of conscience in a case that does not have a robust evidentiary record. Like the Divisional Court, given my conclusion that the

Policies infringe the appellants' s. 2(a) religious freedom, I find it unnecessary to consider the appellants' alternative argument that the Policies infringe the appellants' s. 2(a) freedom of conscience.

(3) Section 15(1)

[86] Section 15(1) of the *Charter* provides:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[87] The Divisional Court referred to the two-part test for establishing a breach of s. 15(1) articulated in *Taypotat*, at paras. 19-20: (1) whether, on its face or in its impact, a law creates a distinction on the basis of an enumerated or analogous ground; and (2) whether the impugned law fails to respond to the actual capacities and needs of the members of the group and instead imposes burdens or denies benefits in a manner that has the effect of reinforcing, perpetuating or exacerbating their disadvantage.

[88] The focus of the inquiry is "whether a distinction has the effect of perpetuating arbitrary disadvantage on the claimant because of his or her membership in an enumerated or analogous group" such that it is a "discriminatory distinction": *Taypotat*, at paras. 16, 18; and *Quebec (Attorney General) v. A.*, 2013 SCC 5, [2013] 1 S.C.R. 61, at para. 331.

[89] Applying this test, the Divisional Court dismissed the appellants' claim that the Policies infringe their equality rights under s. 15(1) of the *Charter*. Without deciding whether the Policies create a distinction on the basis of religion, the Divisional Court held that the Policies do not have the effect of reinforcing, perpetuating or exacerbating a disadvantage or promoting prejudice against religious physicians. Nor do they restrict access to a fundamental social institution or impede full membership in Canadian society.

[90] The appellants renewed their s. 15(1) submissions in their factum but did not address this issue in oral argument. Their written submissions were supported by the EFC et al. They say that the Policies draw a distinction between physicians who are religious and those who are not, and impose a burden on religious physicians that will force them to give up the practice of medicine involving direct patient contact rather than sacrifice their religious beliefs. The Policies force them to do so because of their religious beliefs and are, therefore, discriminatory in their effect.

[91] The EFC et al. submit that the Divisional Court erred in finding that the second branch of the *Taypotat* test was not met. They submit that the inquiry under the second branch is whether the impugned Policies have a discriminatory effect. When looking at the effects, it must be considered "whether the distinction restricts access to a fundamental social institution, or affects 'a basic aspect of full

membership in Canadian society'." They contend that employment is one such fundamental institution.

[92] The College submits that the Divisional Court correctly found that the Policies do not infringe the appellants' s. 15(1) equality rights. It says there was no evidence establishing a differential impact on religious physicians because the Policies apply to all conscientious objectors – regardless of whether the source of their objection is religious or secular.

[93] On the second branch of the test, the College submits that the appellants have failed to show that any distinctive treatment that may be imposed by the Policies is discriminatory in nature.

[94] I would not give effect to the appellants' submissions, largely for the reasons given by the Divisional Court at paras. 128-31. As the Divisional Court stated, the Policies represent an attempt to balance equitable access to health care with physicians' religious beliefs. The Policies, as clarified by the Fact Sheet, provide an appropriate balance for many physicians. Physicians who do not regard the procedures set out in the Fact Sheet as acceptable can transition to other areas of medicine in which these issues of faith or conscience are less likely to arise, if at all.

[95] This takes me to the central issues in this appeal: whether the limits on the appellants' religious freedom can be justified under s. 1 of the *Charter*.

(4) Section 1: The Justification Analysis

[96] Section 1 of the *Charter* provides:

> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[97] The onus at this stage is on the College to establish, on a balance of probabilities, that the infringement of the appellants' freedom of religion is a reasonable limit, demonstrably justified in a free and democratic society: *Multani*, at para. 43.

[98] In *Oakes*, at pp. 135 and 138-39, Dickson C.J. articulated a framework for the s. 1 analysis, which can be summarized as follows:

(a) the *Charter*-infringing measure must be "prescribed by law";

(b) the objective of the impugned measure must be of sufficient importance to warrant overriding a constitutionally protected right or freedom;

(c) the means chosen must be reasonable and demonstrably justified – this is a "form of proportionality test" which will vary in the circumstances, but requires a balancing of the interests of society with the interests of individuals and groups and has three components:

  (i) the measure must be rationally connected to the objective – i.e., carefully designed to achieve the objective and not arbitrary, unfair or based on irrational considerations;

  (ii) the means chosen should impair the *Charter* right or freedom as little as possible; and

(iii) there must be proportionality between the salutary and deleterious effects of the measure.

(a) Prescribed by Law

[99] As noted above, s. 1 requires that limits to *Charter* rights and freedoms must be "prescribed by law". The Policies were enacted by the College pursuant to its authority under the *RHPA*. The Divisional Court, citing *Greater Vancouver Transportation Authority*, held, at para. 137, that the *Charter* may apply to activities of a regulatory entity such as the College to the extent that its activities can be said to be governmental in nature. In particular, where a government policy is "authorized by statute and sets out a general norm or standard that is meant to be binding and is sufficiently accessible and precise, the policy is legislative in nature and constitutes a limit that is 'prescribed by law'" for the purpose of the *Oakes* analysis. The parties do not dispute that this principle applies to the exercise of the College's statutory mandate and that the effective referral requirements of the Policies are limits "prescribed by law".

(b) Pressing and Substantial Objective

[100] It must be established that the objective of the effective referral requirements is sufficiently important to warrant limiting a constitutional right or freedom: see *Multani*, at para. 43; and *Oakes*, at p. 138. This requires the identification of the purpose of the requirements.

[101] The Divisional Court identified the purpose as "the facilitation of equitable [patient] access to [health care] services." This appears to be an amalgam of the purpose identified by the appellants ("ensuring access to health care") and by the College ("the protection of the public, the prevention of harm to patients, and the facilitation of access to care for patients in our multi-cultural and multi-faith society").

[102] The Divisional Court gave context to its description of the purpose of the effective referral requirements, by characterizing physicians as "gatekeepers" in a publicly-funded health care system, with duties not to abandon their patients and to put their patients' interests ahead of their own. The court said, at para. 146:

> As the CPSO notes, underlying this purpose [of the facilitation of patient access to health care] is the context of a publically funded health care system and a patient-centered environment. In this environment, physicians perform a positive role for their patients as "gatekeepers" to health care services and are subject to the obligation of non-abandonment, as well as the obligation to put the interests of their patient ahead of their own. It is entirely consistent with this environment and these obligations that the Policies seek to ensure that the religious and conscientious objections of physicians do not become a barrier to health care for patients who seek healthcare services to which particular physicians may object.

[103] LEAF submits that the importance of promoting women's equality rights by facilitating equal access to health care should also be considered in determining whether the objective of the effective referral requirements is pressing and substantial.

[104] Although initially the appellants did not strenuously challenge the Divisional Court's statement of the purpose of the effective referral requirements, their supplementary factum adopts an argument of the intervener, the JCCF, that the stated purpose of the effective referral requirements is imprecise and too broad, distorting the minimal impairment and balancing stages of the *Oakes* analysis and immunizing the Policies from meaningful scrutiny. Neither the appellants nor the JCCF propose an alternative formulation of the purpose of the requirements.

[105] The College contends that the Divisional Court did not err and the objective articulated is neither overbroad nor imprecise.

[106] In my view, the Divisional Court did not err in articulating the purpose of the effective referral requirements. The Divisional Court struck an appropriate balance in identifying a purpose that is more specific than the "animating social value" of the Policies, but broader than a "virtual repetition" of the effective referral requirements: see *R. v. Moriarity*, 2015 SCC 55, [2015] 3 S.C.R. 485, at para. 28. The purpose identified is firmly rooted in both the language of the Policies and the history and evolution of the Policies themselves.

[107] The Divisional Court also found, at paras. 142, 146-150, that this purpose was a pressing and substantial objective for the purpose of the *Oakes* analysis and, at para. 150, that, "the evidence in the record establishes a real risk of a deprivation of equitable access to health care, particularly on the part of the more

vulnerable members of our society, in the absence of the effective referral requirements of the Policies."

[108] The appellants concede that it was open to the Divisional Court to rely on a reasoned apprehension of harm to find that the Policies serve a pressing and substantial objective. However, they submit that a reasoned apprehension of harm cannot be relied on in the last two branches of the *Oakes* proportionality analysis. They say that evidence of actual harm is required for the minimal impairment and proportionality analyses. This submission is addressed below.

(c) Proportionality

[109] The third requirement of the *Oakes* analysis is that the means chosen to limit the right or freedom in question must be reasonable and demonstrably justified. As noted, this requires an analysis of whether: (1) there is a rational connection between the means and the objective; (2) the means are minimally impairing; and (3) there is proportionality between the salutary and deleterious effects of the measure: *Oakes*, at p. 139; and *Carter*, at para. 94.

(i) Rational Connection

[110] The first step in the proportionality analysis asks whether the means limiting the *Charter* right or freedom are rationally connected to the objective. That is, whether they are designed to further the objective. They must not be arbitrary, unfair or based on irrational considerations: *Oakes*, at p. 139.

[111] The College must show, by reason and logic, and on a balance of probabilities, that the restriction on the *Charter* right or freedom serves its intended purpose: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, at para. 153. This prevents arbitrary interference with the right or freedom: *Hutterian Brethren*, at para. 48.

[112] The Divisional Court found a rational connection between the effective referral requirements and the stated purpose. The limits on physicians' religious freedom would likely further the goal of equitable access to health care. At para. 154, the Divisional Court stated:

> In this case, the effective referral provisions of the Policies guide physicians on how to uphold their professional and ethical obligations of patient-centered care and non-abandonment within the context of the public healthcare system in the Province. It is reasonable to conclude that, in doing so, the Policies will facilitate patient access to care, based on the "gatekeeper" function of physicians in Ontario. As such, there is a rational connection between the objective of the Policies and the means of achieving that objective.

[113] I agree with the Divisional Court that, as a matter of logic and common sense, requiring objecting physicians to give an effective referral for MAiD, abortion or reproductive health care services will promote equitable patient access to those health care services.

(ii) Minimal Impairment

[114] At this step in the analysis, the College is required to show that the Policies impair freedom of religion as little as reasonably possible in order to achieve their objective: *RJR-MacDonald*, at para. 160. As the Supreme Court observed in *Hutterian Brethren*, at para. 53, this question asks "whether there are less harmful means of achieving the legislative goal." The appellants say that there are less harmful means, namely a "generalized information" model and the means employed in other jurisdictions.

Evidence of harm

[115] Relying on the Supreme Court's decision in *Multani*, the appellants submit that a reasoned apprehension of harm is not sufficient to justify an impugned measure at this stage of the *Oakes* analysis. They contend that evidence of actual harm is required and that the College did not meet this evidentiary burden.

[116] The College submits that "actual harm" is not required. The same evidentiary standard applies for every branch of the *Oakes* analysis, including the minimal impairment and proportionality branches and the Divisional Court correctly found that there was sufficient evidence at each stage to support its conclusions. There was evidence that, in the absence of the Policies, vulnerable patients would experience harm due to interference or delay in accessing care, shame and stigma associated with a physician's refusal to provide care, and loss of faith in physicians

and in the health care system. These circumstances could result in complete denial of care in some cases.

[117] The issue of harm must be considered in context.

[118] The record confirms the pivotal role of family physicians, such as the appellants, as the key point of access to the services at issue for the majority of patients. This is highlighted in the supplementary affidavit of Dr. Danielle Martin, filed by the College. Dr. Martin is the Vice President of Medical Affairs and Health Systems Solutions at Women's College Hospital in Toronto. She is herself certified as a family physician and is a Fellow of the College of Family Physicians of Canada. She deposed as follows:

> The reality of health care in Ontario outside hospitals is that patients are deeply reliant on their family physicians to connect them with the resources they need, and the way in which that connection occurs is through a referral. This is especially true in moments of medical and emotional vulnerability, such as the end of life and in the case of an unwanted pregnancy.

[119] Dr. Martin also deposed that:

> This includes rural communities and cultural/ethnic neighbourhoods with unilingual community members, where patients do not have meaningful choices about their primary care provider, and they cannot access specialty care through other channels.
>
> ...
>
> In most communities citizens do not have direct access to multiple different specialists for second and third opinions; they rely on their family physicians to refer them

> to a specialist whose scope of practice meets their needs, and specialists refer to one another on the same basis.

[120] The evidence also bears out Dr. Martin's observations that, given the manner in which health care is currently practiced and made available in Ontario, effective referral is the key to accessing health care services of all kinds, including the wide variety of services to which some physicians have religious objections.

[121] The medical procedures to which the appellants object (an objection shared to varying degrees by the individual appellants and members of the appellant organizations) include: abortion, contraception (including emergency contraception, tubal ligation, and vasectomies), infertility treatment for heterosexual and homosexual patients, prescription of erectile dysfunction medication, gender re-assignment surgery, and MAiD. It is impossible to conceive of more private, emotional or challenging issues for any patient. The evidence establishes that these issues are difficult for patients to raise and to discuss, even with a trusted family physician. The evidence also establishes that some of these decisions frequently confront already vulnerable patients: patients with financial, social, educational or emotional challenges; patients who are old, young, poor or addicted to drugs; patients with mental health challenges or physical or intellectual disabilities; patients facing economic, linguistic, cultural or geographic barriers; and patients who do not have the skills, abilities or resources to navigate their own way through a vast and complicated health care system.

[122] The evidence also establishes that decisions concerning many of these procedures are time-sensitive – obviously so in the case of MAiD, abortion and emergency contraception. Delay in accessing these procedures can prevent access to them altogether.

[123] Abortion and MAiD carry the stigmatizing legacy of several centuries of criminalization grounded in religious and secular morality. The evidence discloses that this stigmatization is still evident in some quarters of the medical community and that it can serve, unintentionally or not, as an obstacle, or an outright barrier to these procedures.

[124] The vulnerable patients I have described above, seeking MAiD, abortion, contraception and other aspects of sexual health care, turn to their family physicians for advice, care and, if necessary, medical treatment or intervention. Given the importance of family physicians as "gatekeepers" and "patient navigators" in the health care system, there is compelling evidence that patients will suffer harm in the absence of an effective referral.

[125] I do not agree that *Multani* supports the appellants' argument that "actual harm" must be demonstrated. Justice Charron, who spoke for the majority, did not require that harm itself be conclusively established. What she said, at para. 67, was: "I agree that it is not necessary to wait for harm to be done before acting, but the existence of concerns relating to safety must be unequivocally established for

the infringement of a constitutional right to be justified" (emphasis added). In this case, concerns relating to the safety of vulnerable patients as a result of deprivation of access to health care services were, and have been, conclusively established. The next issue is whether those concerns could have been addressed by less impairing means.

Less impairing means

[126] In the Divisional Court, the appellants asserted that there were less impairing means of achieving the objective of the effective referral requirements. These included maintaining a public information line for information regarding particular procedures or pharmaceuticals to which physicians object, and requiring physicians to provide information to patients about how to access abortion and contraception and establishing a coordination service or registry for MAiD, as was ultimately done through the CCS. They also pointed to policies of regulators in other provinces, which they claimed were less impairing because they do not require objecting physicians to provide a direct, individualized referral. I will discuss the latter argument in the next section.

[127] The Divisional Court carefully examined the College's evidence concerning its studies and consultations preceding the adoption of the Policies. These included an analysis of alternatives, including variants of the "self-referral" model advocated by the appellants. The Divisional Court found, at para. 167, that, "none

of these alternative models represents a less drastic means of achieving the objective of the Policies in a real and substantial manner and, therefore, that the rights of the Individual Applicants are impaired no more than necessary." That finding of fact attracts deference in this court.

[128] After conducting a detailed review of the evidence regarding the College's Working Groups on both the Human Rights Policy and the MAiD Policy, Wilton-Siegel J. concluded, at para. 170, that the "self-referral" model "inevitably entails a real risk that vulnerable individuals and populations will not be able to access the requested medical services or will not be able to do so in a timely manner." He added that, in any event, there was evidence that the "self-referral" model would not satisfy some of the individual appellants. He stated, at para. 170:

> [I]n my view, these reasons also amply justify the CPSO's conclusion that the Applicants' specific proposals for alternative means to ensure a patient's access to requested medical services would not be effective. As discussed further below, each of the Applicants' proposals relies on a "self-referral" model which inevitably entails a real risk that vulnerable individuals and populations will not be able to access the requested medical services or will not be able to do so in a timely manner. In fact, while the Applicants argue that a physician's obligation should be limited to providing information to patients regarding access to health care services, the Individual Applicants do not hold the same views regarding a satisfactory informational requirement. Several of the Individual Applicants would object to the provision of information regarding the telephone number and address of non-objecting physicians, other health care providers or agencies including the Care Co-ordination Service. Further, while the Care Co-ordination

> Service described above has recently been established in accordance with the requirement under Bill C-14, the Applicants testified that referral of a patient to the Service would entail the same concerns for many religious physicians as referral to a non-objecting physician. Attaching these limitations to alternatives based on the "self-referral" model reinforces the fact that such model does not point to a "significantly less intrusive and equally effective measure" for ensuring access to healthcare.

[129] He also noted, at para. 171, that the appellants' proposals were designed to preserve their rights, and were not directed – as they should have been – to promoting the objective of equitable access to health care:

> Thirdly, as a related matter, while the Applicants have proposed alternative means of addressing the infringement of their rights of freedom of religion, they have not done so on a basis that is directed toward preserving patients' *Charter* rights of equitable access to health care, that is, with a view to furthering the objective of the Policies. As discussed below, the Applicants do not acknowledge that the issues in these proceedings engage any *Charter* rights of patients. Accordingly, the objective of the alternatives proposed by the Applicants is the preservation of the *Charter* rights of religious physicians to the extent necessary to avoid participation in the services to which they object. The significance for present purposes, where the issue is whether the means chosen impair the right no more than is necessary to achieve the objective of patient access to health care, and in particular the objective of equitable access to health care, is that the Applicants have failed to establish that their proposed alternatives are directed toward this objective, much less that such objective could be achieved on the basis of less impairing means.

[130] I have quoted these extracts from the Divisional Court's reasons at some length because they include findings of fact that are firmly rooted in the evidence.

The appellants have not demonstrated any error in these findings. In my view, they are fatal to the appellants' submissions on the issue of minimal impairment.

[131] As I have noted, the appellants advance what they now call a "generalized information" model as a less impairing alternative, which they claim meets the College's objective. They acknowledge, however, that "generalized information" is essentially a different label for what they described as "self-referral" in the Divisional Court, and which the Divisional Court rejected. This model would permit physicians to provide patients with information concerning resources, such as the CCS or Telehealth, to enable patients to locate a non-objecting physician who would provide abortion, MAiD, or other services. They say this is a reasonable and less drastic alternative to an effective referral.

[132] The College argues that the appellants' "generalized information" model is flawed because it does not respond to the realities of the vulnerable patient population and will not achieve the objective of equitable access to health care. The "generalized information" model places the burden on the patient to self-refer to find a physician who will provide the health care they seek. As discussed earlier, this may result in delay in obtaining time-sensitive medical services or it may foreclose access to care altogether. One can reasonably anticipate that the loss of the personal support of a trusted physician would leave the patient with feelings of rejection, shame and stigma. Left to their own devices when he or she most needs

personal support and advice, the patient would be left to negotiate the health system armed with brochures, telephone numbers and websites.

[133] The issue of shame and stigma is not theoretical. One of the individual appellants was asked on cross-examination what she would do if a patient came to her office seeking an abortion. The physician in question has a sign posted in her office telling patients that she will not refer for abortions or assist in obtaining an abortion, and will not assist with other "'medical' practices" such as MAiD, because she "cannot in good conscience" assist patients with those services. Nevertheless, she stated that if a patient sought an abortion she would ask why the patient was interested in abortion and whether there was anything that could help the patient carry the baby to term. She would also discuss the "very obvious implications" of an abortion, including that "the baby dies" and that there might be some "psychiatric issues" after an abortion. Finally, she might refer the patient to a resource that offered counselling, but not one that would provide an abortion. By using this example, I do not suggest that the physician was unsympathetic to the circumstances of the hypothetical patient. What I do suggest is that the physician's views could reasonably be expected to have a deterrent and stigmatizing effect on that patient, impeding her access to the medical services she had requested.

[134] The College contends that there is no evidence in the record that supports the appellants' position that Telehealth functions as a "patient navigator" or actually connects patients with the service they are seeking, particularly the services at

issue in this proceeding. Moreover, the appellants' proposal does not account for the Divisional Court's finding of fact that at least some objecting physicians would refuse to provide patients with "generalized information" on the grounds that it would make them complicit in the acts.

[135] The College's position is supported by the interveners, Dying with Dignity Canada, the Canadian HIV/AIDS Legal Network et al., and LEAF. These interveners highlighted the needs and vulnerabilities of the patients they serve, their dependence on their health care providers and their need for a direct, personal and effective referral to a health care professional in the event of a religious or conscientious objection by their physician.

[136] Dying with Dignity Canada notes that communication itself is a significant barrier for many patients seeking MAiD. Those patients are entitled to access MAiD in a manner that protects their privacy rights. They rely on the confidential and personal assistance of their physicians to make the necessary contacts with a medical service for MAiD. Some may not have friends, family or caregivers who will help connect them with a clinician or the CCS. Some may not wish to involve others in their care decisions. Expecting patients who qualify for MAiD to navigate themselves through the medical system is unrealistic in many cases.

[137] Dying with Dignity Canada also notes that delay is a significant practical concern for patients seeking MAiD. If a patient loses capacity to consent, they are

no longer eligible for MAiD. Once a patient is connected to a willing clinician, the process for actually obtaining MAiD can take time. By placing the onus on patients to contact the CCS or Telehealth, the appellants' model increases the possibility of front-end delay in accessing MAiD.

[138] The vulnerability of patients seeking MAiD is self-evident, but it is firmly established in the evidentiary record. Dr. Kevin Imrie is a physician at Sunnybrook Health Sciences Centre in Toronto, who gave evidence on behalf of the College. Dr. Imrie observed that when patients meet the criteria for MAiD they are necessarily vulnerable physically and psychologically. They are also exceptionally dependent on their health care providers. At the time his affidavit was sworn, Dr. Imrie had participated in three cases of MAiD. He deposed that,

> Patients who find themselves in the position of seeking MAiD are often in the most vulnerable of positions, are very sick, and facing all of the physical, mental and emotional burdens and trauma associated with facing the end of their lives. During such a time, they are enormously dependent upon their doctors and the health care system for what quality of life they do have.

[139] Similarly, Dr. Edward Weiss, a family physician and the contact person for MAiD for the William Osler Health System in Brampton and Etobicoke, deposed that at least seven patients whom he had seen for MAiD in the previous year would not have easily, or perhaps not at all, been able to access the CCS without the assistance of a health care professional.

[140] The interveners, the Canadian HIV/AIDS Legal Network et al., point out that patients living with HIV/AIDS face stigmatization and discrimination related to their health care needs. The same is true of transgender patients who encounter challenges in accessing appropriate health care, hormonal treatments and transition-related services. These barriers add to the challenges of patients with HIV/AIDS or transgender patients in accessing MAiD and other health care services and accentuate the need for direct and personal referrals.

[141] The appellants' own evidence illustrates these challenges. One of the individual appellants described how she had responded to a transgendered patient who sought assistance in transitioning. She explained her religious convictions to the patient: "I believe that God has created us male and female, and that choosing to change your gender is working against how God has made you. And ultimately when people change their gender they think that life is going to be better but there's a high suicide rate when people change their gender." The physician referred the patient to a psychiatrist for "gender dysphoria". Again, I do not doubt the physician's sincerity or her dedication to her patient. Her evidence demonstrates, however, how physicians' religious objections can be a barrier to access to health care for marginalized groups. Such remarks could reasonably be expected to cause the patient stigma and shame.

[142] LEAF submits that many women, particularly women from marginalized communities, may lack the necessary knowledge of the health care system, skills,

or resources to seek out and obtain reproductive health services independently. The inability to access appropriate reproductive health care can result in unwanted pregnancies, psychological stress and increased risk of morbidity. LEAF submits that due to historic inequalities in accessing the medical system, many women are dependent on physician approval in order to access reproductive services. For these women, an effective referral from their primary health care provider may be the only channel to access the care they need.

[143] LEAF's submission is supported by the evidence, which establishes that access to abortion and contraception continues to be "uneven" in Canada, in the words of Dr. Martin, and that the invocation of conscientious and religious objections by physicians impedes access to abortion, contraception and other reproductive medical procedures and pharmaceuticals.

[144] Dr. Sheila Dunn is the Research Director of the Family Practice Health Centre of Women's College Hospital and an active member of the clinical staff. She spent approximately 13 years as the Medical Director of the Bay Centre for Birth Control in Toronto, a clinic that offers comprehensive sexual and reproductive health care to women, including contraception, abortion, treatment, testing, information, counselling and referral for other sexual health services.

[145] Dr. Dunn's evidence demonstrates that issues of reproductive health are particularly impactful for new immigrants, youth, Indigenous women, women in

remote or rural communities and people with limited economic means. Many of these patients are reluctant to raise issues of sexual and reproductive health on their own – as a result, they have higher rates of unmet needs for contraception, unintended pregnancy and abortion.

[146] The evidence underscores the impact of a physician's refusal to provide such services for religious reasons. Dr. Barbara Bean is a counsellor at the Choice in Health Clinic, a non-profit abortion clinic in Toronto. She has over 45 years' experience in the reproductive health field and has counselled thousands of women. Dr. Bean spoke to the impact on patients of their physicians' religious and moral beliefs, including delay, trauma, shame and self-doubt:

> I estimate that hundreds of these women came to us having suffered delays in finding us after first contacting their family physicians or others in the health care sector seeking information about, and possibly a referral for, abortion services. In many cases, women would tell me that not only would their doctors not refer them or help them find care, but their doctors would voice their own personal feelings and religious or moral objections to abortion when the patients raised the issue with them. In other cases, the reasons for the doctors failing to assist their patients were not necessarily tied to religious or moral reasons.
>
> ...[Patients whose physicians refused to provide assistance in accessing abortions] felt traumatized and actively denigrated by their physicians' denial of assistance. Their doctors' lack of support and lack of empathy in refusing to provide a referral for abortion care caused them to doubt their decisions to seek abortions, and to feel shame and guilt about their decisions. They

> deeply felt their doctors' lack of respect for them and their choices.

[147] In my view, the appellants' fresh evidence fails to demonstrate that a "generalized information" model, providing patients with information about the CCS, Telehealth or other similar resources, would address the needs of vulnerable patients seeking the most intimate and urgent medical advice and care. Ultimately, the College considered and rejected "self-referral" models like the model proposed by the appellants. Based on the College's evidence, the Divisional Court found that "self-referral" models could not achieve the objective of ensuring equitable access to health care given the inevitable risk to vulnerable patients that such models entail. That finding remains uncontroverted.

[148] I turn now to the appellants' submission that the policies adopted in other jurisdictions provide models that would be reasonable and less impairing alternatives to the Policies.

Policies in other jurisdictions

[149] The appellants, supported by the interveners, B'nai Brith et al., submit that in the face of less impairing and equally effective means adopted in other jurisdictions, the College was required to prove that these alternatives were not a suitable option. They rely on the following passage from para. 160 of *RJR-Macdonald*: "if the government fails to explain why a significantly less intrusive and equally effective measure was not chosen, the law may fail." The appellants say

that objectives of policies in place in other jurisdictions which adopt alternative means are substantially similar to the objective being advanced by the College and thus represent "significantly less intrusive and equally effective measures".

[150] The College disagrees with the appellants' reliance on policies in other jurisdictions as a matter of law and fact. It submits that the Divisional Court correctly found that other Canadian medical regulators have substantially similar requirements to those imposed by the Policies. They point in particular to the policies in place in Saskatchewan, Quebec and Nova Scotia. For example, the policy in Nova Scotia requires that the physician complete an "effective transfer of care". Counsel for the appellants acknowledged that this requirement is similar to the Policies and that it could well be unacceptable to some religious physicians.

[151] In any event, the College submits that case law governing minimal impairment accounts for the fact that different provinces may draw the line at different places. The fact that some provinces may have done so does not establish that the College's chosen means are not minimally impairing.

[152] The law does not require that the College choose the least intrusive or the least restrictive means, but only that the means chosen fall within a range of reasonable alternatives, while limiting the *Charter* right or freedom as little as reasonably possible: *Gordon v. Canada (Attorney General)*, 2016 ONCA 625, 351 O.A.C. 44, at para. 261, leave to appeal to S.C.C. refused, [2016] S.C.C.A. No.

444 and [2016] S.C.C.A. No. 445, citing *R. v. Swain*, [1991] 1 S.C.R. 933, at p. 983.

[153] The fact that other jurisdictions have established policies that the appellants regard as less impairing is not persuasive. As the Divisional Court noted, the parties did not agree on the manner in which those policies operate. Some of the policies can be interpreted to mean that, in some cases, a physician may be required to give an effective referral to ensure that a patient receives the medical services he or she requests or requires. There was also evidence to support the Divisional Court's conclusion referred to above that regulations in a number of other Canadian jurisdictions impose referral requirements similar to those adopted by the College.

[154] The College was not bound to accept the "lowest common denominator", whether it is labelled "self-referral" or "generalized information", when it found, through its own studies, that that model would not protect patients. I agree with the observation of the Divisional Court, at para. 174, citing to *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at p. 999, that legislative action to protect vulnerable groups is not "necessarily restricted to the least common denominator of actions taken elsewhere" and that minimal impairment does not "require legislatures to choose the least ambitious means to protect vulnerable groups."

[155] A measure of deference is owed to the College's policy judgment regarding how best to balance the competing interests of physicians and their patients. The Policies represent a difficult policy choice, one which the College, as a self-governing professional body with institutional expertise in developing policies and procedures governing the practice of medicine, was in a better position to make than a court: *M. v. H.*, [1999] 2 S.C.R. 3, at paras. 78-79; and *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360, at para. 25. The College was uniquely qualified to craft the Policies in a manner sensitive to the conditions of the practice of medicine in Ontario: *Trinity Western*, at para. 37. Courts must be cautious not to overstep the bounds of their institutional competence in reviewing such decisions. Often, as in this case, the proper course of judicial conduct is to afford a measure of deference to the College's judgment: *Wynberg v. Ontario* (2006), 82 O.R. (3d) 561 (C.A.), at para. 184, leave to appeal to S.C.C. refused, [2006] S.C.C.A. No. 441; and *Carter*, at paras. 97-98.

[156] There is more, however. The fundamental problem with the appellants' proposed alternative model is the same as identified by the majority of the Supreme Court in *Hutterian Brethren*. The Hutterian claimants objected to having their photographs taken, which the province required in order to hold a driver's licence. The province, which was concerned about the misuse of drivers' licences for identity theft, proposed that those who objected on religious grounds could have their photographs held in a central photo bank. The claimants proposed instead

that their licences could be stamped, "Not to be used for identification purposes". The Supreme Court observed, at paras. 57-60, that the deficiency in the claimants' proposal was that it compromised the province's objective of minimizing the risk of misuse of drivers' licences for identify theft. The proposal, "instead of asking what is minimally required to realize the legislative goal, asks the government to significantly compromise it": *Hutterian Brethren*, at para. 60. Accordingly, the alternative proposed by the Hutterian claimants was not appropriate for consideration at the minimal impairment stage of the analysis.

[157] The same is true here. The alternatives proposed by the appellants and some of the interveners are directed to minimizing the burden of the Policies on objecting physicians, not to advancing the goal of equitable access to abortion, MAiD, contraception and sexual and reproductive health care. The appellants' alternatives would compromise the College's goal, because they would require already vulnerable patients to attempt to navigate the health care system on their own, without any direct personal assistance from their physicians, whom they entrust to act as their navigators for health care services. This would impair equitable access to health care.

[158] At para. 177 of his reasons, Wilton-Siegel J. concluded:

> [T]he Policies fall within the range of reasonable alternatives for addressing physicians' conscientious and religious objections to particular medical procedures and pharmaceuticals given the objective of the effective

> referral requirements of the Policies. As such, I find that the effective referral requirements of the Policies satisfy the minimal impairment test under *Oakes*.

[159] That conclusion was supported by the evidence before the Divisional Court. It is confirmed by the College's fresh evidence before this court.

Conclusion on minimal impairment

[160] On the basis of the evidence before the Divisional Court, the findings of the Divisional Court, the fresh evidence adduced in this court and the submissions of the parties and the interveners, I am satisfied that the alternatives identified by the appellants are fatally flawed. While arguably less impairing of their rights, they are focused on their rights and not on the objective of the effective referral requirements or the interests of vulnerable patients. The evidence shows that the appellants' "generalized information" model, like other "self-referral" models, will impair equitable access to health care rather than promote it. It will impair equitable access to health care because it will enable objecting physicians to abandon their role as patient navigators without an appropriate transfer of the patient to another physician or service. In view of the vulnerability of the patients, this is just not adequate. I will not repeat the Divisional Court's reasons at para. 171, cited earlier, but they are equally apt here.

[161] I am also satisfied that if something more than a reasoned apprehension of harm is required at this stage of the analysis, the College has proven that harm will, in fact, occur to vulnerable groups in the absence of the effective referral

requirements. Ultimately, I am satisfied that the College, before this court and the Divisional Court, discharged its onus of proving that the effective referral requirements are minimally impairing of the appellants' religious freedom.

(iii) Balancing the Salutary and Deleterious Effects

[162] The final requirement of the *Oakes* proportionality analysis is that "there must be a proportionality between the effects of the measures which are responsible for limiting the *Charter* right or freedom, and the objective which has been identified as of 'sufficient importance'": *Oakes*, at p. 139. At para. 73 of *Hutterian Brethren*, McLachlin C.J. articulated the question as being: "are the overall effects of the law on the claimants disproportionate to the government's objective?" At para. 76, she explained the utility of this stage of the *Oakes* analysis:

> It may be questioned how a law which has passed the rigours of the first three stages of the proportionality analysis — pressing goal, rational connection, and minimum impairment — could fail at the final inquiry of proportionality of effects. The answer lies in the fact that the first three stages of *Oakes* are anchored in an assessment of the law's purpose. Only the fourth branch takes full account of the "severity of the deleterious effects of a measure on individuals or groups".

[163] She observed, at para. 85, that the proponent of the measures is not required to produce positive proof that the measure will be beneficial and that it is enough to show by reason and evidence that it will be.

Salutary and deleterious effects

[164] Prior to engaging in the balancing process, the Divisional Court identified the salutary and deleterious effects of the effective referral requirements of the Policies. I have mentioned these above. In broad overview, the requirements enhance equitable access to MAiD, abortion and other services and reduce or eliminate barriers, delays, anxiety and stigmatization of vulnerable patients in circumstances in which their physicians object to the services on grounds of religion or conscience.

[165] The deleterious effects of the requirements for objecting physicians are the burden and anxiety associated with a choice between their deeply-held religious beliefs and complicity in acts which they regard as sinful. For some objecting physicians, but not all, the options set out in the Fact Sheet are not compatible with their beliefs and they are faced with the additional burdens of choosing between leaving the field of medicine in which they practice, leaving Ontario to practice elsewhere, or leaving the practice of medicine altogether.

Balancing

[166] The Divisional Court noted that three contextual considerations are relevant to the proportionality analysis. First, the right of patients to equitable access to lawful and provincially-funded health care services engages a s. 7 *Charter* right of patients. This observation signals that in the proportionality analysis, the court

must consider not only the *Charter* rights and freedoms of objecting physicians, but also the interests of patients.

[167] Second, the Divisional Court observed that physicians have no right to practice medicine, let alone a constitutionally-protected right to do so. Third, it noted that Ontario physicians practice in a single-payer, publicly-funded health care system, which is structured around patient-centered care. In the case of a conflict, the interests of patients come first, and physicians have a duty not to abandon their patients.

[168] Turning to the balancing, the Divisional Court noted the evidence that the goals of the Policies will be compromised if patients are simply given information and then expected to access services themselves.

[169] The Divisional Court described the costs or burdens on objecting physicians. It noted that for many Ontario physicians, referral of a patient for the procedures at issue does not raise religious or ethical concerns. The concerns of others with religious objections, including some of the individual appellants, can be addressed by the options in the Fact Sheet. This is particularly the case for physicians who practice in a hospital, a clinic or a family practice group. Thus, the effective referral requirements are primarily a concern for those who do not practice in such a setting or those who find the options unacceptable. The principal, and perhaps the only, means of addressing these concerns would be to focus their practice in a specialty

or sub-specialty that would not present circumstances in which the Policies would require an effective referral of patients in respect of medical services to which they object. While this is not a trivial impact, it permits an objecting physician to continue to practice medicine and is less serious than outright exclusion from practice.

[170] The Divisional Court concluded that "to the extent there remains any conflict between patient rights and physician rights that cannot be reconciled within the Policies, the former must govern."

[171] The appellants make two objections to the Divisional Court's proportionality analysis.

[172] First, they submit that in order for a *Charter* violation to be found to be proportionate, there must be actual evidence of the salutary effects flowing from the means chosen. In this case, they say that there is no evidence that the Policies will have any salutary effect. Far from improving access to health care, they say, the Policies will force physicians like the appellants to leave family practice, move to other practice areas, leave Canada, or even cease practicing medicine altogether. They say that the Policies will harm, not help, the public.

[173] Second, the appellants challenge the Divisional Court's conclusion that objecting physicians could change the nature of their practice so as to avoid coming into contact with issues addressed by the Policies.

[174] Turning to the first point, I have already reviewed much of the evidence, which was accepted by the Divisional Court and which supports its conclusion at para. 186, that:

> [I]t is reasonable to expect on the evidence and logic that an "effective referral" requirement will make a positive difference in ensuring access to healthcare, and in particular equitable access to healthcare, in circumstances in which a physician objects on religious or conscientious grounds to the provision of medical services requested by a patient.

[175] The individual appellants themselves gave evidence that they cannot take steps which make them complicit in the provision of services to which they object. The evidence of the College was that the Policies were necessary to provide equitable access to health care.

[176] The Divisional Court concluded based on the evidence before it that it was not in a position to evaluate the impact on health care and patients due to physicians leaving family practice or the practice of medicine in Ontario. The appellants have not adduced evidence before this court to undermine that conclusion. Accordingly, it remains unclear whether such a response to the Policies either has occurred or is likely to occur in any meaningful ways.

[177] The second issue relates to the burden on physicians of changing their practice. Much of the fresh evidence was directed to this issue. The appellants take the position that the burden imposed on objecting physicians amounts to a bar from practicing direct patient care. They submit that the fresh evidence shows

that while it is theoretically possible for a physician to change specialty or sub-specialty, there are significant practical challenges in doing so.

[178] They further submit that in addition to the deleterious effects on the physicians, the overall effect of the Policies is reduced access to health care for patients due to physicians leaving Ontario, leaving the practice of medicine, or entering a retraining program.

[179] The position of the appellants is supported by the OMA. The OMA submits that the Divisional Court's balancing of the salutary and deleterious effects was not based on an appropriate evidentiary record. It submits that the balancing must be revisited in light of the fresh evidence regarding the practical difficulties of changing a physician's specialty or scope of practice. Those difficulties include the limited number of retraining positions available, the duration of retraining, family considerations, financial constraints, and uncertainty about new practice opportunities.

[180] The EFC et al. submit that the Policies assume that religious accommodation would only have deleterious effects and overlook the salutary effects for the "greater public good" associated with accommodating religious minorities in the medical profession.

[181] On the issue of the cost or burden imposed by the Policies, the appellants rely on the fresh evidence of Dr. Parveen Wasi, the Associate Dean, Postgraduate

Medical Education, at the Faculty of Health Sciences at McMaster University in Hamilton. Dr. Wasi explains how Ontario's Re-Entry Program works in practice, what the consequences are for working physicians, and the associated costs and risks to a physician who applies to that program. He explains that re-entry applicants face hurdles, including "a high demand for positions from recent graduates, funding constraints, internal university priorities, and overall uncertainty about acceptance." Not only is it difficult to be admitted to the re-entry program, there are financial and other burdens associated with going through a residency program, which range in length from two to seven years.

[182] The appellants also rely on the evidence of Dr. Nuala Kenny, Emeritus Professor at Dalhousie University and Founding Chair of the Department of Bioethics. Dr. Kenny comments on the costs and burdens for physicians who might be expected to change the nature of their practice to a "safe specialty". She opines that "there is no way for physicians involved in direct patient care to be protected from a request for an effective referral."

[183] The College submits that, at its highest, the impact of the Policies is minimal and the burden or cost imposed does not require a physician to change their speciality or sub-speciality. The burden is one of practice management and can be addressed through administrative measures such as implementing a system to triage specific patient requests, partnering with another non-objecting physician, or hiring support staff. Physicians who cannot implement such measures have the

option to change the scope of their practice, an action which does not require retraining.

[184] The College relies on the evidence of Dr. William McCauley, a Medical Advisor at the College, who states that a change in speciality or sub-specialty is not the only option for physicians. He makes the point that physicians may be able to change or narrow their "scope of practice" without engaging in specialist retraining through formal residency. He points to the following areas as areas of medicine in which physicians are unlikely to encounter requests for referrals for MAiD or reproductive health concerns, and which may not require specialty retraining or certification: sleep medicine, hair restoration, sport and exercise medicine, hernia repair, skin disorders for general practitioners, obesity medicine, aviation examinations, travel medicine, and practice as a medical officer of health. He also points to other roles in which a physician would be shielded from patient requests for referrals, such as administrative medicine or surgical assistance.

[185] In resolving the balancing exercise, I find much assistance in the submissions of the intervener, Dying with Dignity Canada, which observes that in balancing the salutary effects of the Policies against the deleterious effects on objecting physicians, it was appropriate for the College and the Divisional Court to conclude that patients should not bear the burden of managing the consequences of physicians' religious objections. It bears noting that the "compromise" arrived at by the College is not optimal for patients, who must accept being referred for MAiD

if their physician objects to the procedure. As Dying with Dignity Canada notes, the burden imposed by the Policies is minimal and is acceptable for some of the appellants and for many other physicians. But, as it said:

> If a doctor is unwilling to take the less onerous step of structuring their practice in a manner that ensures that their personal views do not stand in the way of their patients' rights to dignity, autonomy, privacy and security of the person, then the more onerous requirement of a transfer into a new specialty is a reasonable burden for that doctor to bear.

[186] The Fact Sheet identifies options that are clearly acceptable to many objecting physicians. Those who do not find them acceptable may be able to find other practice structures that will insulate them from participation in actions to which they object. If they cannot do so, they will have to seek out other ways in which to use their skills, training and commitment to patient care. I do not underestimate the individual sacrifices this may require. The Divisional Court correctly found, however, that the burden of these sacrifices did not outweigh the harm to vulnerable patients that would be caused by any reasonable alternative. That conclusion is not undermined by the fresh evidence before this court. Even taking the burden imposed on physicians at its most onerous, as framed by the appellants, the salutary effects of the Policies still outweigh the deleterious effects.

[187] As the Divisional Court observed, the appellants have no common law, proprietary or constitutional right to practice medicine. As members of a regulated and publicly-funded profession, they are subject to requirements that focus on the

public interest, rather than their interests. In fact, the fiduciary nature of the physician-patient relationship requires physicians to act at all times in their patients' best interests, and to avoid conflicts between their own interests and their patients' interests: College of Physicians and Surgeons of Ontario, *The Practice Guide* (Toronto: CPSO, September 2007), at pp. 4-5, 7; *McInerney v. MacDonald*, [1992] 2 S.C.R. 138, at p. 149; and *Norberg v. Wynrib*, [1992] 2 S.C.R. 226, at pp. 270-72, 274. The practice of a profession devoted to service of the public necessarily gives rise to moral and ethical choices. The issues raised in this proceeding present difficult choices for religious physicians who object to the Policies, but they do have choices. While the solution is not a perfect one for some physicians, such as the individual appellants, it is not a perfect one for their patients either. They will lose the personal support of their physicians at a time when they are most vulnerable. Ordinarily, where a conflict arises between a physician's interest and a patient's interest, the interest of the patient prevails. The default expectation is that the physician is to personally provide their patient with all clinically appropriate services or to provide a formal referral. Patients expect that their physicians will do so. However, the Policies do not require this. They represent a compromise. They strike a reasonable balance between patients' interests and physicians' *Charter*-protected religious freedom. In short, they are reasonable limits prescribed by law that are demonstrably justified in a free and democratic society.

G. CONCLUSION

[188] For these reasons, I would dismiss the appeal. Costs may be addressed by written submissions in the event they have not been resolved.

Released: MAY 15 2019

George R. Strathy C.J.O.

I agree. S.T. Goudge J.A.

I agree Lauwers J.A.